

EXHIBIT B

DAVID A. CIARRACHI

April 27, 2010

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION</p> <p>AMERICAN AUTOMOBILE) INSURANCE COMPANY, a) Missouri corporation,) Plaintiff,)</p> <p>-vs-) Case No. B.D. McCLURE AND) 1:09-cv-01589 ASSOCIATES, LTD., et al.,) Defendants.)</p> <p>The deposition of DAVID A. CIARRACHI, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before ALICE M. SCHWINGER, CSR NO. 84-2913, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, at 2067 Burlington Avenue, Lisle, Illinois, on the 27th day of April, A.D. 2010, commencing at 9:30 a.m.</p>	<p style="text-align: right;">3</p> <p>1 (WHEREUPON, the witness was duly 2 sworn.) 3 DAVID A. CIARRACHI, 4 called as a witness herein, having been first duly 5 sworn, was examined and testified as follows: 6 DIRECT EXAMINATION 7 BY MR. RICE: 8 Q. Mr. Ciarrachi, am I pronouncing that 9 correctly? 10 A. Ciarrachi. 11 Q. Could you please state and spell your 12 full name for the record? 13 A. David Anthony Ciarrachi, 14 C-I-A-R-R-A-C-H-I. 15 MR. RICE: Let the record reflect that this is 16 the deposition of David Ciarrachi taken in the case 17 of American Automobile Insurance Company 18 B.D. McClure and Associates, Case No. 09 CV 19 which is currently pending in the United States 20 District Court for the Northern District of 21 Illinois. 22 This deposition is being taken pursuant 23 to subpoena and notice and in accordance with the 24 Federal Rules of Civil Procedure, the United States</p>
<p style="text-align: right;">2</p> <p>1 PRESENT: 2 HINSHAW & CULBERTSON, LLP, 3 (222 North LaSalle Street, Suite 300, 4 Chicago, Illinois 60601, 5 (312) 704-3000), by: 6 MR. DANA A. RICE, 7 appeared on behalf of the Plaintiff; 8 CONNELLY, ROBERTS & MCGIVNEY, LLC, 9 (55 West Monroe Street, Suite 1700, 10 Chicago, Illinois 60603, 11 312/251-9600), by: 12 MR. JEFFREY J. SCOLARO, 13 appeared on behalf of B.D. McClure and 14 Associates; 15 KAVANAGH, GRUMLEY & GORBOLD, LLC, 16 (111 North Ottawa Street, 17 Joliet, Illinois 60434, 18 815/727-1586), by: 19 MR. PAUL RICHARDS, 20 appeared on behalf of Dale J. Sippel 21 d/b/a Genie Temporary Services; 22 23 REPORTED BY: ALICE M. SCHWINGER, CSR 24 CSR No. 84-2913.</p>	<p style="text-align: right;">4</p> <p>1 District Courts. 2 BY MR. RICE: 3 Q. Mr. Ciarrachi, my name is Dana Rice. I 4 represent American Automobile Insurance Company in 5 a lawsuit involving B.D. McClure and Associates and 6 Genie Temporary Services; okay? 7 A. Mm-hmm. 8 Q. I'm going to be asking you a series of 9 questions today. Have you ever given a deposition 10 before? 11 A. Yes. 12 Q. So you're very familiar with the 13 process. If at any time today you don't understand 14 my question or it's too convoluted, which often 15 happens when I ask questions, just let me know, I'd 16 be happy to reask it, rephrase it. If you answer a 17 question that I ask, I'll assume you understood 18 what I was asking and that was your answer; is that 19 fair? 20 A. Yes. 21 Q. I know that sometimes during the course 22 of the conversation, you know -- you may know 23 exactly what I'm asking for and you know what your 24 answer is going to be. Just let me finish my</p>



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<p>1 question before you answer, it's just for the 2 benefit of the court reporter -- 3 A. Sure. 4 Q. -- so down the road when we try to read 5 this two months from now, it reads well. 6 A. Yes. 7 Q. And then make sure that all of your 8 answers to my questions are verbal, yes, no or an 9 answer, rather than uh-huh or uh-uh, those are 10 difficult for the court reporter to take down; 11 okay? 12 A. Yes. 13 Q. And then if at any time you need to take 14 a break, use the restroom, I'm more than happy to 15 do that, just let me know; okay? 16 A. Okay. 17 Q. At the outset, are you aware of any 18 conditions you have or any medications that you 19 taking that would affect in any way your ability to 20 give truthful and complete answers to my questions 21 today? 22 A. No. 23 Q. Did you review any documents in 24 preparation for your deposition today?</p>	5	<p>1 MR. SCOLARO: I object on the basis of 2 attorney-client privilege to the extent that there 3 was anything referred to in our -- in Brian and 4 Dave's conversation, but to the extent that there 5 wasn't anything that was discussed, it may or may 6 not be attorney-client privilege and Dave may 7 answer the question. 8 Maybe you can repeat that. 9 BY THE WITNESS: 10 A. No, I understand. 11 BY MR. RICE: 12 Q. Did you speak to Brian McClure about the 13 substance of his deposition which in any way didn't 14 relate to things that you either got from 15 Mr. Scolaro in that letter or that, you know, was a 16 general -- 17 A. No, it was a general conversation about 18 the substance of his deposition. 19 Q. Mr. Ciarrachi, when were you born? 20 A. 8/23/43. 21 Q. '43? I'm sorry. 22 A. '43. 23 Q. Where do you currently live? 24 A. 1012 South Cherry Lane, Lombard,</p>	7
<p>1 A. Yes. 2 Q. What documents did you review? 3 A. An overall letter that Jeff Scolaro had 4 provided for me about the substance of a deposition 5 that my partner, Brian McClure, had given me. 6 MR. RICE: And Jeff, just so I'm clear, are 7 you representing Mr. Ciarrachi in this -- as it 8 pertains to this case? 9 MR. SCOLARO: We are. 10 MR. RICE: And so I will assume you're going 11 to assert attorney-client privilege over the 12 letter? 13 MR. SCOLARO: I am. 14 BY MR. RICE: 15 Q. Aside from Jeff Scolaro, did you speak 16 with anyone else about your deposition today? 17 A. No. 18 Q. You didn't talk to Mr. McClure about it? 19 A. About this deposition or his deposition? 20 Q. Your deposition today. 21 A. No. 22 Q. Did you talk about his deposition? 23 A. Yes. 24 Q. What did you talk about?</p>	6	<p>1 Illinois. 2 Q. And do you have any plans on moving from 3 that address any time soon? 4 A. No. 5 Q. If you could just briefly describe to me 6 your educational background. 7 A. College, Elmhurst College, 1968. 8 Q. What degree did you obtain at Elmhurst? 9 A. Marketing and psychology. 10 Q. Any post-graduate work? 11 A. No. 12 Q. Where are you currently employed? 13 A. I'm a partner in McClure and Associates 14 and Brimar Administration at -- what's the address 15 here -- 2067 Burlington Avenue, Lisle, Illinois. 16 Q. And the name, full name of Brimar is 17 what? 18 A. Brimar Administration. 19 Q. Is that a company? 20 A. Yes, it's an LLC. 21 Q. Do you know when it was formed? 22 A. Exact date, no, but sometime in the 23 early '80s. 24 Q. Are you a partner in the LLC?</p>	8



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<p>1 A. Yes.</p> <p>2 Q. Are you the sole partner?</p> <p>3 A. No.</p> <p>4 Q. Who else is a partner in Brimar</p> <p>5 Administration, LLC?</p> <p>6 A. Brian McClure.</p> <p>7 Q. Anyone else?</p> <p>8 A. No.</p> <p>9 Q. What's your position within Brimar?</p> <p>10 A. President.</p> <p>11 Q. And how long have you been the president</p> <p>12 for?</p> <p>13 A. Since the date of its LLC incorporation.</p> <p>14 Q. Has Brimar been in business since its</p> <p>15 incorporation?</p> <p>16 A. Before then.</p> <p>17 Q. And prior to that, did it -- was it</p> <p>18 working or operating under any different name?</p> <p>19 A. No.</p> <p>20 Q. You just hadn't formally incorporated --</p> <p>21 A. It was a sole proprietorship prior to</p> <p>22 the LLC formation.</p> <p>23 Q. Do you know when Brimar started doing</p> <p>24 business?</p>	<p>11</p> <p>1 Q. Is the ability for Brimar to act as an</p> <p>2 administrator for the insured carrier specific,</p> <p>3 meaning do certain carriers allow you to do that</p> <p>4 and certain ones don't?</p> <p>5 A. It's on a negotiated basis.</p> <p>6 Q. And would you negotiate that both with</p> <p>7 the carrier and the insured?</p> <p>8 A. Yes.</p> <p>9 Q. Are you a licensed insurance broker?</p> <p>10 A. No.</p> <p>11 Q. Have you ever been?</p> <p>12 A. No.</p> <p>13 Q. Do you hold any other insurance-related</p> <p>14 licenses?</p> <p>15 A. No.</p> <p>16 Q. Do you need to to be an administrator?</p> <p>17 A. No.</p> <p>18 Q. Did you take any additional educational</p> <p>19 courses or anything like that post your graduate</p> <p>20 degree in Elmhurst to operate Brimar?</p> <p>21 A. I was a formal -- I was a former</p> <p>22 employee of the insurance industry as a bodily</p> <p>23 injury adjuster and a commercial claims manager,</p> <p>24 and during that period of time, I took numerous</p>
<p>10</p> <p>1 A. 1976.</p> <p>2 Q. If you could, just briefly describe to</p> <p>3 me what Brimar does.</p> <p>4 A. We're an administration company for</p> <p>5 McClure and Associates in that we have several</p> <p>6 clients who we unbundle coverages for in the</p> <p>7 that we act as their claims administrator for the</p> <p>8 portion of the policy that they have taken upon</p> <p>9 themselves through a deductible format.</p> <p>10 Q. Would that apply to both deductibles</p> <p>11 and, for example, SIRs?</p> <p>12 A. Yes.</p> <p>13 Q. Just so I understand, so if a client of</p> <p>14 McClure and Associates purchased several</p> <p>15 types of insurance, commercial, auto, CGL,</p> <p>16 whatever, to the extent they decided to have a</p> <p>17 deductible on any facet of that coverage or an</p> <p>18 in the facet of that coverage, you would serve as</p> <p>19 the claims administrator for that particular</p> <p>20 portion of coverage?</p> <p>21 A. If they chose to do that and the carrier</p> <p>22 allowed us to do that.</p> <p>23 Q. Is that carrier specific?</p> <p>24 A. I'm not -- I don't quite follow that.</p>	<p>12</p> <p>1 classes at the insurance institute adjusting CPCU,</p> <p>2 various associated courses to my occupation with</p> <p>3 the insurance industry.</p> <p>4 Q. So this would have been sometime before</p> <p>5 the early '70s or mid '70s?</p> <p>6 A. Late '60s and '70s, yes.</p> <p>7 Q. What carrier were you working for back</p> <p>8 then?</p> <p>9 A. When I was the claims manager or</p> <p>10 adjuster?</p> <p>11 Q. Do the adjuster first.</p> <p>12 A. Home Indemnity of New York.</p> <p>13 Q. Where was that based out of?</p> <p>14 A. 10 South Riverside Plaza in Chicago.</p> <p>15 Q. And you were a claims administrator for</p> <p>16 them?</p> <p>17 A. No, I was a claims adjuster. I then</p> <p>18 became a claims manager for Nationwide Insurance</p> <p>19 Company who are based in Columbus, Ohio.</p> <p>20 Q. When did you start with Home Indemnity?</p> <p>21 A. 1966.</p> <p>22 Q. And then when did you join Nationwide?</p> <p>23 A. 1972.</p> <p>24 Q. After you left Nationwide, is that when</p>



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<p style="text-align: right;">13</p> <p>1 you started up Brimar?</p> <p>2 A. Brimar was ongoing while I was with</p> <p>3 Nationwide on a part-time basis, and then when</p> <p>4 Brian McClure and myself became partners in</p> <p>5 the agency and the administration company, we</p> <p>6 formulated the outline of the program I had given</p> <p>7 you earlier.</p> <p>8 Q. So is it fair to say that while you were</p> <p>9 working at Nationwide, you were also adjusting</p> <p>10 claims through Brimar?</p> <p>11 A. Yes.</p> <p>12 Q. Did Brimar have an administration</p> <p>13 agreement with Nationwide or --</p> <p>14 A. No.</p> <p>15 Q. -- was it just --</p> <p>16 A. No.</p> <p>17 Q. Did you administer any Nationwide</p> <p>18 policies?</p> <p>19 A. No.</p> <p>20 Let me take that back. When you say</p> <p>21 administer Nationwide policies, we wrote an</p> <p>22 with Nationwide while I was with McClure that</p> <p>23 us administration ability. In other words,</p> <p>24 Nationwide gave us the ability to administer the</p>	<p style="text-align: right;">15</p> <p>1 phones for Brimar?</p> <p>2 A. It's a joint venture, so I would say</p> <p>3 that's a shared staff.</p> <p>4 Q. So how many -- do you have any -- how</p> <p>5 many people do you believe to be shared staff</p> <p>6 between Brimar and McClure and Associates?</p> <p>7 A. I would say probably everybody here is,</p> <p>8 some to a much greater degree than others.</p> <p>9 Q. So during the course of the day, one</p> <p>10 member of McClure and Associates staff may have</p> <p>11 more duties with respect to McClure and</p> <p>12 than does Brimar, but there could be some</p> <p>13 A. That's right.</p> <p>14 Q. Is there anybody that works at this</p> <p>15 office that works exclusively for Brimar?</p> <p>16 A. No.</p> <p>17 Q. Is there anybody at this office that</p> <p>18 works exclusively for Mr. McClure?</p> <p>19 A. No.</p> <p>20 Q. Is there anyone outside of this office</p> <p>21 that works for Brimar?</p> <p>22 A. No.</p> <p>23 Q. So every staff member and/or employee</p> <p>24 that is paid by Brimar would be located at this</p>
<p style="text-align: right;">14</p> <p>1 program as I described earlier, so at that point in</p> <p>2 that program, we were the administrator for that</p> <p>3 account.</p> <p>4 Q. Okay. How many employees does Brimar</p> <p>5 currently have?</p> <p>6 A. I'm not certain how they -- how our</p> <p>7 accountant breaks down the differential of</p> <p>8 employees between Brimar and McClure because</p> <p>9 jointly owned 50 percent and I'm not sure how the</p> <p>10 accounting process works as to which employee is a</p> <p>11 Brimar employee, which employee is a McClure</p> <p>12 employee.</p> <p>13 Q. I understand that Brimar operates out of</p> <p>14 the office we're currently at?</p> <p>15 A. That's right.</p> <p>16 Q. I also understand that McClure and</p> <p>17 Associates also operates out of this office?</p> <p>18 A. That's right.</p> <p>19 Q. It's my understanding in speaking with</p> <p>20 Mr. McClure at his deposition that both Brimar and</p> <p>21 McClure and Associates share staff; is that fair?</p> <p>22 MR. SCOLARO: Could you define staff?</p> <p>23 BY MR. RICE:</p> <p>24 Q. First of all, how many people answer the</p>	<p style="text-align: right;">16</p> <p>1 office?</p> <p>2 A. The payment of employees is a joint</p> <p>3 venture, there would be no employee paid</p> <p>4 specifically by Brimar.</p> <p>5 Q. Would the payment then come from McClure</p> <p>6 and Associates or the combination of McClure and</p> <p>7 Ciarrachi?</p> <p>8 MR. SCOLARO: Objection: Asked and answered,</p> <p>9 but go ahead.</p> <p>10 BY THE WITNESS:</p> <p>11 A. It would be -- again, it's an accounting</p> <p>12 procedure. I'm not certain how the accountant has</p> <p>13 the spread of distribution to salary.</p> <p>14 BY MR. RICE:</p> <p>15 Q. I saw -- you know, we've exchanged a lot</p> <p>16 of documents in this case and I saw Brimar's name</p> <p>17 listed a number of different ways, so I just want</p> <p>18 to ask you if it may be a mistake they were written</p> <p>19 this way or these may have been prior companies, I</p> <p>20 just want to make sure.</p> <p>21 Is there any such entity as Brimar</p> <p>22 Investigations, Inc.?</p> <p>23 A. That was the sole proprietorship.</p> <p>24 Q. So that's what --</p>



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<p>17</p> <p>1 A. Same company.</p> <p>2 Q. That was what Brimar started at prior to</p> <p>3 its formation as an LLC?</p> <p>4 A. That's right.</p> <p>5 Q. So is it fair to say then that was</p> <p>6 formed sometime in the early '70s?</p> <p>7 A. Early '80s.</p> <p>8 Q. The Brimar Investigations?</p> <p>9 A. No, the Brimar Administration.</p> <p>10 Q. When was Brimar Investigations started?</p> <p>11 A. In the mid '70s, I think it's '76, '77,</p> <p>12 something like that.</p> <p>13 Q. And again, Brimar Investigations</p> <p>14 provided essentially the same services as Brimar</p> <p>15 Administration, it was just a different name?</p> <p>16 A. No, no. Basically what that -- I was</p> <p>17 the sole proprietor with Brimar Investigations and</p> <p>18 I did investigational work, sometimes pre-trial,</p> <p>19 sometimes for an insurance company on a fee</p> <p>20 So I worked for many companies.</p> <p>21 There was no coverage involved or no</p> <p>22 separation of coverage and claims administration</p> <p>23 when I was working as a sole proprietor, strictly</p> <p>24 an investigational phase of my business operation.</p>	<p>19</p> <p>1 Q. Has there ever been any other Brimar</p> <p>2 names that you're aware of that you've been</p> <p>3 associated with?</p> <p>4 A. No.</p> <p>5 Q. What is Brimar's relationship with B.D.</p> <p>6 McClure and Associates?</p> <p>7 A. I answered that question earlier.</p> <p>8 Q. Could you answer it again?</p> <p>9 A. Well, we -- in certain policies, we will</p> <p>10 present to a given prospective client an option of</p> <p>11 administration of claims that they may not want</p> <p>12 done by the carrier and they want unbundled</p> <p>13 done by us as an administrator.</p> <p>14 Q. How long have you been administering</p> <p>15 claims for McClure and Associates?</p> <p>16 A. Since 198 -- whatever the year is I told</p> <p>17 you we were made an LLC.</p> <p>18 Q. How long have you known Brian</p> <p>19 A. Since about 1980.</p> <p>20 Q. Did you know him prior to becoming a</p> <p>21 partner with him?</p> <p>22 A. Yes.</p> <p>23 Q. On a personal level then?</p> <p>24 A. No.</p>
<p>18</p> <p>1 Q. So a carrier may hire you to help assist</p> <p>2 in preparing a matter for trial, for example?</p> <p>3 A. That's right.</p> <p>4 Q. There was no adjustment of claims</p> <p>5 process at that point?</p> <p>6 A. Or a law firm may hire me. As a matter</p> <p>7 of fact, your law firm hired me.</p> <p>8 Q. Oh, really?</p> <p>9 A. Yes.</p> <p>10 Q. When did we hire you, do you recall?</p> <p>11 A. Late '60s.</p> <p>12 Q. Probably before I was born; right?</p> <p>13 A. A long, long time ago.</p> <p>14 Q. Who did you work with?</p> <p>15 A. I couldn't tell you their names.</p> <p>16 Q. Do you remember what the case was?</p> <p>17 A. No. Numerous cases.</p> <p>18 Q. I also saw the name Brimar Industries?</p> <p>19 A. Never heard of it.</p> <p>20 Q. Aside from Brimar Investigations, which</p> <p>21 was the sole proprietorship, and then Brimar</p> <p>22 Administration, have you operated under any other</p> <p>23 name?</p> <p>24 A. No.</p>	<p>20</p> <p>1 Q. So solely business partners?</p> <p>2 A. He was with Nationwide Insurance Company</p> <p>3 as a salesman, I was there as a claims manager.</p> <p>4 Q. And at some point while you were at</p> <p>5 Nationwide, you decided to branch off and do your</p> <p>6 own thing?</p> <p>7 A. We thought we could make a better wheel.</p> <p>8 Q. Mr. McClure mentioned during his</p> <p>9 deposition that in addition to B.D. McClure and</p> <p>10 Associates and Brimar Administration, there was</p> <p>11 this third entity created called McClure and</p> <p>12 Ciarrachi, LLC?</p> <p>13 A. It's a funnel account for the funds of</p> <p>14 both corporations.</p> <p>15 Q. I didn't catch the -- funnel account for</p> <p>16 both?</p> <p>17 A. Corporations, with LLCs, funnel all of</p> <p>18 their -- the revenues into one which is the,</p> <p>19 whatever you called it, the --</p> <p>20 Q. McClure and Ciarrachi Associates?</p> <p>21 A. Yeah.</p> <p>22 Q. Just so I'm clear for the record --</p> <p>23 A. There are no employees in that grouping,</p> <p>24 that's strictly an accounting name for the</p>



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<p>21</p> <p>1 funneling of -- in how we handle our finances.</p> <p>2 MR. SCOLARO: I want to take a quick break</p> <p>3 after he's done answering this question.</p> <p>4 BY MR. RICE:</p> <p>5 Q. And I just want to make sure for the</p> <p>6 record because I know exactly what you're saying, I</p> <p>7 just want the record to be clear, the McClure and</p> <p>8 Ciarrachi Associates is a funnel account where</p> <p>9 money is funneled from B.D. McClure and Associates</p> <p>10 and Brimar Administration; is that correct?</p> <p>11 MR. SCOLARO: Objection to the extent that my</p> <p>12 client is not an accountant, but to the extent he</p> <p>13 understands the question.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I understand what you're saying, but</p> <p>16 again, you know, the accounting procedures, I'm not</p> <p>17 involved day-to-day in the accounting procedures,</p> <p>18 so I couldn't tell you exactly with absolute</p> <p>19 certainty how that works, and rather than tell you</p> <p>20 something that I'm guessing at, I would rather not</p> <p>21 answer that question specifically.</p> <p>22 MR. RICE: If you want to take a break, I have</p> <p>23 more questions about this organization but --</p> <p>24 MR. SCOLARO: It will be two minutes.</p>	<p>23</p> <p>1 Q. Where is he located?</p> <p>2 A. Northbrook, Illinois.</p> <p>3 Q. Is he with a company?</p> <p>4 A. He is, but I couldn't tell you the name</p> <p>5 of it.</p> <p>6 Q. Do you and Mr. McClure own equal</p> <p>7 interest in the McClure and Ciarrachi LLC?</p> <p>8 A. Yes.</p> <p>9 Q. 50/50?</p> <p>10 A. Yes.</p> <p>11 Q. And do you own a 50 percent interest in</p> <p>12 McClure and Associates?</p> <p>13 MR. SCOLARO: Objection: Asked and</p> <p>14 but go ahead.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Yes.</p> <p>17 BY MR. RICE:</p> <p>18 Q. And then McClure -- Mr. McClure owns</p> <p>19 50 percent of Brimar; correct?</p> <p>20 A. Yes.</p> <p>21 Q. The subject matter of this lawsuit</p> <p>22 involves a lot of claims that are related to</p> <p>23 insurance that was sold involving AEG. Are you</p> <p>24 familiar with that?</p>
<p>22</p> <p>1 (WHEREUPON, a short break was</p> <p>2 taken.)</p> <p>3 BY MR. RICE:</p> <p>4 Q. Before the break we were talking about</p> <p>5 McClure and Ciarrachi and Associates, the funnel</p> <p>6 account that was created.</p> <p>7 A. Mm-hmm.</p> <p>8 Q. Besides you and Mr. McClure, who else</p> <p>9 was involved in that LLC?</p> <p>10 A. I don't believe anybody else is.</p> <p>11 Q. Do you know when the McClure and</p> <p>12 Ciarrachi LLC was formed?</p> <p>13 A. At the same time as the Brimar LLC, I</p> <p>14 believe. And again, I'm guessing here, I'm not 100</p> <p>15 percent certain because you're going into an area</p> <p>16 of accounting that I'm not familiar with and I</p> <p>17 don't normally keep track of.</p> <p>18 Q. And does Brimar and McClure and</p> <p>19 Associates share the same accountant?</p> <p>20 A. Yes.</p> <p>21 Q. And who is your accountant?</p> <p>22 A. Howard Gamer.</p> <p>23 Q. Is that G-A-M-E-R?</p> <p>24 A. Mm-hmm.</p>	<p>24</p> <p>1 A. Yes.</p> <p>2 Q. Do you know when McClure started</p> <p>3 soliciting or selling AEG insurance?</p> <p>4 A. I'd be guessing, but '05 or '06.</p> <p>5 Q. Do you know approximately how long</p> <p>6 Mr. McClure sold AEG insurance for?</p> <p>7 A. Until May of '07, I believe.</p> <p>8 Q. And if we use your range of '05, '06 to</p> <p>9 May of '07, we'll just -- for purposes of this</p> <p>10 deposition, we'll call it about a year; okay?</p> <p>11 A. Yes.</p> <p>12 Q. Just for our purposes of discussion.</p> <p>13 During that year period of selling AEG</p> <p>14 insurance, how long during that period did Brimar</p> <p>15 administer claims for AEG?</p> <p>16 A. The entire time.</p> <p>17 Q. And did Brimar administer claims after</p> <p>18 McClure stopped selling AEG insurance?</p> <p>19 A. No.</p> <p>20 Q. So once McClure ceased selling AEG</p> <p>21 insurance, Brimar ceased administering those</p> <p>22 claims?</p> <p>23 A. I had a cease and desist order from the</p> <p>24 State, as did McClure and Associates.</p>



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<p style="text-align: right;">25</p> <p>1 Q. You understood the cease and desist 2 order that you received to mean that you could no 3 longer administer claims also? 4 A. I took it to mean I couldn't do anything 5 relative to the AEG program. 6 Q. Is Brimar still receiving claims 7 involving AEG insurance? 8 A. Receiving claims, are you talking about 9 incurred but not reported claims? I'm not sure -- 10 you have to define what -- when you're asking me 11 that question -- 12 Q. Okay. 13 A. -- as to what you mean by receiving 14 claims. 15 Q. If a -- well, I guess we'll come back to 16 that. 17 Were you in any way involved in the 18 selling of AEG insurance? 19 A. I would be out on all proposals to 20 discuss the facet of the program we were 21 presenting, yes. 22 Q. So you would accompany Mr. McClure in 23 those proposals? 24 A. Any of the producers who we have here.</p>	<p style="text-align: right;">27</p> <p>1 Staffing. 2 Q. Was he the person that recommended AEG 3 to you? 4 A. Yes, he -- yes, he came in here after 5 our initial meeting and talked about AEG and the 6 ability for AEG/RCA to sell what I would call 7 non-traditional accounts such as staffing services, 8 roofing companies, more difficult non-standard 9 market risks. 10 Q. I believe Mr. McClure testified that he 11 understood AEG to be offering a product for higher 12 risk clients. Would that be a fair assessment? 13 A. Non-standard, yes. 14 Q. Do you know why McClure would recommend 15 AEG insurance to one of its client as opposed to 16 another insurance company? 17 A. Well, the main reason, the reason I just 18 outlined, they were doing non-standard product. 19 Q. So did you understand it to mean that 20 they would get a better rate through AEG than 21 somebody else? 22 A. Not necessarily. They could provide 23 coverage that some other carrier would not be 24 willing to provide because it was non -- non --</p>
<p style="text-align: right;">26</p> <p>1 Q. And what would your role be during 2 this -- the presentation process? 3 A. Talk about the program, the way the 4 program was administered, the way the program 5 set up, the way I understood the total coverage 6 issues to be -- to be set in the eyes of the State 7 of Illinois. 8 Q. My understanding from Mr. McClure is 9 that he dealt with a Mike Ward at AEG. Does that 10 name sound familiar? 11 A. Yes. 12 Q. Have you ever met Mike Ward? 13 A. Yes. 14 Q. When did you first meet him? 15 A. My first meeting with him was when he 16 was in a -- a risk manager for a company called 17 Elite Staffing. 18 Q. Do you recall approximately when that 19 was? 20 A. 2/4, 2/5, something like that. 21 Q. February of '05? 22 A. No, '04 or '05, I'm not sure which year 23 it was. We went in there to try to sell Elite 24 Staffing and he was the risk manager for Elite</p>	<p style="text-align: right;">28</p> <p>1 non-acceptable product to the mainstream industry. 2 Q. Do you know approximately how many 3 worker's comp insurance carriers McClure placed 4 coverage for? 5 A. How many policyholders we wrote -- 6 Q. No, I'm sorry, how many carriers did 7 McClure offer to its clients if they were looking 8 for worker's compensation insurance? 9 MR. SCOLARO: Objection to the extent that 10 my -- Dave was not the -- privy to some of those 11 conversations, but to the extent that he knows the 12 answer to that question and can outline it, he can 13 go ahead and answer. 14 BY THE WITNESS: 15 A. We would talk about the markets that we 16 had. We had, you know -- we hold the contracts 17 with numerous markets, so we would talk about our 18 ability, if, in fact, we knew the market had the 19 potential to write that class of business, we would 20 talk about those companies. 21 BY MR. RICE: 22 Q. And when you say "market", what do you 23 mean? 24 A. Well, a market is the industry. I mean,</p>



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<p>29</p> <p>1 if I talk to you about the insurance market, I'm 2 talking to you about the industry as a whole, the 3 carriers within the market. 4 Q. If I were a staffing company that came 5 to McClure and Associates to seek coverage for my 6 worker's compensation -- 7 A. Yes. 8 Q. -- exposure? 9 A. Yes. 10 Q. Do you know the process in which it 11 would be decided that I would be placed with AEG 12 versus some other company, do you know that 13 process? 14 A. It would be a case of us telling them 15 these are carriers that are involved in writing 16 that product, and these are the ones that we've had 17 the most success in placing business with and these 18 are the ones that are competitive in price range. 19 Q. And do you know approximately how many, 20 you know, carriers offered worker's compensation 21 products that were in your pool of availability for 22 clients? 23 A. For? 24 Q. Four? Do you know --</p>	<p>31</p> <p>1 have to offer me? 2 A. Then it would depend on the type of 3 program you wanted, it would depend upon the 4 of your premium, and so there are var -- there are 5 variables to carriers who will write your product 6 in your example. 7 Q. Okay. Do you have a finite number of 8 carriers you can use to write any product for, for 9 example, staffing companies? 10 A. When you define finite, you mean 11 unlimited? 12 Q. No, I mean -- there are certain carriers 13 McClure and Associates does not write business 14 correct? 15 A. That's right. You have to have a 16 contract to write business for them. 17 Q. How many contracts do you have with 18 carriers that write worker's compensation 19 insurance? 20 A. I would be guessing, but I would say 21 eight to ten. 22 Q. And would that be the same number 23 approximately during -- that you had contracts 24 during the time frame in which McClure was</p>
<p>30</p> <p>1 A. No, I'm saying for what? You've got to 2 be more specific. 3 Q. Again, using my example, if I came in 4 here looking for worker's compensation insurance, 5 you said that you would tell this prospective 6 client that you had certain carriers that would 7 write that particular product; right? 8 A. Yes, but you have to be specific to 9 product because all carriers don't write all 10 products. 11 Q. And I'm using the product of worker's 12 compensation insurance. 13 A. To the extent that I talk about a 14 product, I'm talking about your industry. 15 Q. Okay. So -- 16 A. So you would have to tell me what your 17 product is for me to tell you if the carrier would 18 be willing to write it. 19 Q. So let's use my example as a staffing 20 company. 21 A. Okay. 22 Q. If I came to you looking for worker's 23 compensation for my staffing company, how many 24 different carriers would McClure and Associates</p>	<p>32</p> <p>1 AEG business? 2 A. Contracts but not contracts that would 3 write staffing services. 4 Q. How many contracts did you have with 5 companies that wrote worker's compensation 6 insurance for staffing clients? 7 A. Depending on the size -- again, I 8 would -- you know, this is a very limited question 9 that I could respond to because it isn't as simple 10 as saying you walk in the door and say I want 11 insurance and I'm a staffing service, you know. 12 There are qualifiers for every carrier, you know, 13 you'd have to tell me if you have drug testing, you 14 would have to tell me the size of your premium, you 15 would have to tell me the nature of your work. 16 In other words, some carriers will not 17 write staffing services that do heavy construction, 18 they won't write it if they do heavy industry. I 19 mean, it varies. So every question we would ask 20 you would be to determine who -- which carrier 21 would best fit your risk. 22 Q. If you had, using your number, eight 23 contracts with eight clients -- or carriers that 24 could sell worker's comp insurance to anybody --</p>



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<p>33</p> <p>1 A. Yes.</p> <p>2 Q. -- the questions you would be asking the</p> <p>3 potential client would only narrow the number of</p> <p>4 options you had available to you out of the eight?</p> <p>5 A. That's right.</p> <p>6 Q. So you're not going to go outside of the</p> <p>7 eight you have because you don't have a contract</p> <p>8 with them?</p> <p>9 A. Right, couldn't do it.</p> <p>10 Q. So that's what I wanted to know.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Because you were involved in the</p> <p>13 presentation of AEG insurance to potential clients,</p> <p>14 did you do any investigation yourself into the</p> <p>15 solvency of AEG?</p> <p>16 A. Yes.</p> <p>17 Q. What investigation did you do?</p> <p>18 A. I called -- I called RCA -- as I</p> <p>19 understood the program to be, AEG was a fronting</p> <p>20 company for RCA. And when I say "fronting</p> <p>21 company," typically in this industry, a group of</p> <p>22 investors will put up a certain amount of risk</p> <p>23 money that they themselves will be responsible for</p> <p>24 and there will be excess insurance over and above</p>	<p>35</p> <p>1 Q. Well, my question originally was did you</p> <p>2 do any investigation into the solvency of AEG?</p> <p>3 A. I did investigation into the</p> <p>4 relationship between AEG and RCA.</p> <p>5 Q. And that rela -- that investigation that</p> <p>6 you performed occurred after you heard some</p> <p>7 that possibly there might be some problems</p> <p>8 their relationship --</p> <p>9 A. That's right.</p> <p>10 Q. -- RCA and AEG; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And obviously, that investigation</p> <p>13 occurred after McClure had already started placing</p> <p>14 clients with AEG; right?</p> <p>15 A. Which is standard in the industry. If a</p> <p>16 carrier walks in the door, you don't typically do a</p> <p>17 background check on the carrier. There's an</p> <p>18 assumption of professionalism in the industry that</p> <p>19 if somebody is presenting you with a product and</p> <p>20 presenting you with a carrier, that they're a</p> <p>21 legitimate admitted carrier to the State of</p> <p>22 Illinois.</p> <p>23 Q. Do you know who you spoke with at RCA</p> <p>24 when you called them?</p>
<p>34</p> <p>1 that. And it was my understanding that AEG was the</p> <p>2 fronting company, that RCA was the excess carrier.</p> <p>3 So I called RCA, I called a company called Monument</p> <p>4 Insurance Agency, which was the agency that</p> <p>5 supposedly put together RCA and AEG, and I also</p> <p>6 called the Department of Insurance in the State of</p> <p>7 Illinois.</p> <p>8 Q. Monument, is that what --</p> <p>9 A. Monument, yes.</p> <p>10 Q. Do you know where they're based out of?</p> <p>11 A. They were in New York. The state, I</p> <p>12 couldn't -- I mean, the city, I couldn't tell you.</p> <p>13 Q. Did you call RCA before any clients were</p> <p>14 placed with AEG?</p> <p>15 A. No, I called them as -- we went into the</p> <p>16 process -- I had heard rumors to the effect that</p> <p>17 there may be some issues with the relationship</p> <p>18 between RCA and AEG, and I wanted to check on those</p> <p>19 issues to determine if there was any credibility to</p> <p>20 those.</p> <p>21 Q. Okay. So your investigation into the</p> <p>22 solvency of AEG and RCA --</p> <p>23 A. I don't think "solvency" is the right</p> <p>24 word. The relationship is what I was checking on.</p>	<p>36</p> <p>1 A. Didn't speak with anybody because they</p> <p>2 never returned my call.</p> <p>3 Q. Did you ever write them?</p> <p>4 A. No.</p> <p>5 Q. You said you also contacted a company</p> <p>6 call Monument; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that was after you tried to call</p> <p>9 RCA?</p> <p>10 A. That's right.</p> <p>11 Q. And did you ever speak with anyone at</p> <p>12 Monument?</p> <p>13 A. No, they never returned my call. I left</p> <p>14 voicemail messages with them on numerous</p> <p>15 Q. Do you know who you called?</p> <p>16 A. It was -- who I called directly, no. I</p> <p>17 was calling Monument to see if they could direct</p> <p>18 to the person who was handling the AEG/RCA</p> <p>19 relationship.</p> <p>20 Q. And did you ever follow up with them in</p> <p>21 writing?</p> <p>22 A. No.</p> <p>23 Q. And then finally, you said you contacted</p> <p>24 the Department of Insurance; correct?</p>



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<p>37</p> <p>1 A. That's right.</p> <p>2 Q. And this was after your calls to RCA and</p> <p>3 Monument were unreturned?</p> <p>4 A. That's right.</p> <p>5 Q. Okay. And did you end up speaking with</p> <p>6 anyone at the Department of Insurance?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know who you spoke to?</p> <p>9 A. Name, I do not recall. He identified</p> <p>10 himself as the chief investigator for the</p> <p>11 Department of Insurance.</p> <p>12 Q. Do you recall approximately when you</p> <p>13 spoke to him or her?</p> <p>14 A. You mean the year and the date?</p> <p>15 Q. Approximately.</p> <p>16 A. '07, mid -- early, January, February,</p> <p>17 maybe late of '06, something in that time frame.</p> <p>18 Q. So sometime '06 to '07?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. Do you recall the substance of your</p> <p>21 conversation with them?</p> <p>22 A. Yes.</p> <p>23 Q. What was the substance?</p> <p>24 A. It was very basic and very brief, any</p>	<p>39</p> <p>1 BY MR. RICE:</p> <p>2 Q. During the course of discovery in this</p> <p>3 case, a certificate of insurance was produced</p> <p>4 relating to -- purportedly relating to an insurance</p> <p>5 policy that RCA had issued above and beyond the</p> <p>6 insurance. Are you familiar with that certificate?</p> <p>7 A. I am.</p> <p>8 Q. Okay. What did you understand that</p> <p>9 certificate to represent?</p> <p>10 A. Exactly as I outlined earlier, that</p> <p>11 there was an excess carrier and a funnel carrier.</p> <p>12 Q. Okay. Did you do any investigation into</p> <p>13 the certificate of insurance, meaning did you</p> <p>14 contact RCA to request a copy of the insurance</p> <p>15 policy that was identified on the certificate?</p> <p>16 A. I've already answered that. I called</p> <p>17 RCA and I called -- I called RCA and Monument</p> <p>18 relative to that issue.</p> <p>19 Q. Well, you had indicated earlier that you</p> <p>20 contacted RCA to discuss a potential problem</p> <p>21 between RCA --</p> <p>22 A. That was the problem.</p> <p>23 Q. What was the problem?</p> <p>24 A. The problem that I was not certain that</p>
<p>38</p> <p>1 issues between RCA and AEG, any problems that the</p> <p>2 State has seen between the two of them.</p> <p>3 Q. And what was the response?</p> <p>4 A. No.</p> <p>5 Q. So the Department of Insurance told you</p> <p>6 back in 2006/07 that there were no problems between</p> <p>7 RCA and AEG?</p> <p>8 A. That's right. I then followed with a</p> <p>9 letter to the Department of Insurance that would</p> <p>10 confirm our conversation and I never received a</p> <p>11 response back.</p> <p>12 Q. So you sent them a letter?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you retain a copy of that</p> <p>15 letter?</p> <p>16 A. Yes.</p> <p>17 MR. RICE: I'm not sure if it's been produced,</p> <p>18 but if it has --</p> <p>19 MR. SCOLARO: I'm 90 percent sure it has, but</p> <p>20 if you don't have a copy, sure, we can certainly do</p> <p>21 that. I believe it also might be an exhibit to the</p> <p>22 counterclaim but I'm not quite sure.</p> <p>23 MR. RICE: Okay.</p> <p>24 ///</p>	<p>40</p> <p>1 there were not issues.</p> <p>2 Q. Between their relationship?</p> <p>3 A. That's right.</p> <p>4 Q. Okay. When did you get the certificate</p> <p>5 of insurance?</p> <p>6 A. I don't recall that.</p> <p>7 Q. So your conversation to RCA after you</p> <p>8 heard rumors about a potential problem was</p> <p>9 investigate the relationship between them two and</p> <p>10 part of that investigation was to follow up on what</p> <p>11 was said on the certificate?</p> <p>12 A. Yes. Well, that was the premise of it.</p> <p>13 Q. Okay. And the premise being you wanted</p> <p>14 to make sure there was insurance?</p> <p>15 A. The premise was that there was a</p> <p>16 legitimate certificate and a legitimate</p> <p>17 relationship.</p> <p>18 Q. Were you in any way involved in</p> <p>19 determining AEG's A.M. Best rating?</p> <p>20 A. AEG was the fronting company, they would</p> <p>21 not have had a rating.</p> <p>22 Q. How about a rating for RCA?</p> <p>23 A. RCA was the excess carrier and I never</p> <p>24 made contact with them, as I just indicated.</p>



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<p>41</p> <p>1 Q. So the answer is you did not verify 2 their A.M. Best rating; correct? 3 A. No. 4 Q. Okay. And you would not have verified 5 it prior to writing the business with AEG; correct? 6 A. Writing the business with whom? 7 Q. AEG? 8 A. Well, they were one and the same. There 9 were not two different entities, they were one and 10 the same. 11 Q. My question is -- McClure started 12 writing AEG business sometime in, I believe we said 13 2005/06 to May of '07? 14 A. That's right. 15 Q. Were you involved in any way in 16 verifying RCA's A.M. Best rating before that 17 business was written? 18 A. I myself, no. 19 Q. I'm sure you're familiar with the 20 Illinois Insurance Guaranty Fund; correct? 21 A. Yes. 22 Q. Did you believe in any way that the fund 23 would step in to pay claims made involving AEG 24 after AEG became insolvent?</p>	<p>43</p> <p>1 of a potential problem with AEG and RCA, which 2 provoked you to contact RCA to verify that; right? 3 Do you know how you became aware of that problem? 4 A. It was just a -- it was more of a 5 discomfort level on my part. I was not comfortable 6 with questions I would ask Mr. Ward and his 7 responses, so I decided to do a due diligence on my 8 part by making the phone calls to the people who 9 were primary to any insurance operation, which 10 would have been the carrier, the agency and the 11 State. 12 Q. And do you recall when that level of 13 discomfort set upon you? 14 A. It was created during the period of time 15 in our relationship, it was an ongoing thing. 16 Q. Okay. So was this during the time 17 period in which AEG business was still being 18 written by McClure? 19 A. Yes. 20 (WHEREUPON, a certain document 21 was marked Ciarrachi Deposition 22 Exhibit No. 1, for identification, 23 as of April 27, 2010.) 24 ///</p>
<p>42</p> <p>1 A. Yes, because RCA was an admitted 2 carrier, and the admitted carrier in the State of 3 Illinois has to pay boards and bureaus, which go to 4 the Guaranty Fund. 5 Q. Okay. And did you ever receive a 6 response from the Guaranty Fund with respect to 7 these claims? 8 A. After the fact? 9 Q. After AEG become insolvent. 10 A. No, we received a -- our conversations 11 were all with the office of the special deputy. I 12 am not certain if they're connected with the 13 Guaranty Fund or not, but it was the office of the 14 special deputy who was involved from that point on. 15 Q. Okay. And when you say "that point on," 16 you mean from after they became insolvent? 17 A. After May of '07, when the office -- 18 when the Department of Insurance came in and said 19 we have a cease and desist order. 20 Q. Have you ever had any contact directly 21 with the Guaranty Fund? 22 A. Not the Guaranty Fund, only the office 23 of the special deputy. 24 Q. You had mentioned that you caught word</p>	<p>44</p> <p>1 BY MR. RICE: 2 Q. Mr. Ciarrachi, I'm showing you what's 3 been marked as Exhibit 1 for your deposition. Take 4 a moment to look at that and let me know when 5 you're finished. 6 A. Mm-hmm. I'm familiar with the basic 7 premise of this. 8 Q. Okay. So my first question is do you 9 recognize Exhibit 1? 10 A. Yes. 11 Q. And do you know what it is? 12 A. It's a cease and desist. 13 Q. Okay. Is it the cease and desist order 14 that you talked about earlier from the -- that you 15 received? 16 A. Yes. 17 Q. You'll see on Page 1 of Exhibit 1, there 18 are four entities listed in the "To" box. Do you 19 see that? 20 A. Yes. 21 Q. Okay. I'm obviously familiar with 22 Mr. McClure and McClure and Associates. Again, 23 there's the Brimar Industries, that was the sole 24 proprietorship?</p>



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<p>45</p> <p>1 A. I have no idea what that is.</p> <p>2 Q. Okay. No idea what that is.</p> <p>3 And then Brimar Claims Administrative</p> <p>4 Company, again, I assume --</p> <p>5 A. We've talked about that.</p> <p>6 Q. Is that just a misnomer on the part of</p> <p>7 the State?</p> <p>8 A. I have no idea. I didn't prepare this</p> <p>9 document, I received the document.</p> <p>10 Q. Okay. Brimar Administration has never</p> <p>11 gone by Brimar Claims Administrative; correct?</p> <p>12 A. Brimar Claims Administrative Company, is</p> <p>13 that what you're asking me about or Brimar</p> <p>14 Industries?</p> <p>15 Q. We know Brimar Industries never existed,</p> <p>16 right, Or you don't know about it?</p> <p>17 A. I don't know anything about it.</p> <p>18 Q. Okay. What about Brimar Claims</p> <p>19 Administrative Co.?</p> <p>20 A. Yes, that's what we've talked about</p> <p>21 earlier in our conversation.</p> <p>22 Q. You mentioned earlier Brimar</p> <p>23 Administration, LLC. Is that the same thing?</p> <p>24 A. Same thing.</p>	<p>47</p> <p>1 anything relative to the AEG/RCA program.</p> <p>2 I, furthermore, had a discussion with</p> <p>3 the office of the special deputy about -- and maybe</p> <p>4 I should ask you first without -- what I'm about to</p> <p>5 say because I'm not certain --</p> <p>6 MR. SCOLARO: Well, I would just -- answer the</p> <p>7 question to the best of your recollection. To the</p> <p>8 extent it involves any conversations that you and I</p> <p>9 have had --</p> <p>10 THE WITNESS: It wasn't a conversation --</p> <p>11 Jeff, you weren't even involved at that time.</p> <p>12 BY THE WITNESS:</p> <p>13 A. But we met with the office of the</p> <p>14 special deputy. I requested a meeting with them.</p> <p>15 We discussed a myriad of cases and we said, "How</p> <p>16 should we go about these cases."</p> <p>17 We presented numerous options that we</p> <p>18 felt we needed to move forward with, and the</p> <p>19 premise was to try to limit the damages, because</p> <p>20 from day one in insurance, the obligation of the</p> <p>21 insured is to limit the damages, which is what</p> <p>22 we -- our attempt was in meeting with the office of</p> <p>23 the special deputy. We presented special --</p> <p>24 specific options to them.</p>
<p>46</p> <p>1 Q. Did Brimar Administration ever go by</p> <p>2 that name, Brimar Claims Administrative Co.?</p> <p>3 MR. SCOLARO: Objection: Asked and answered,</p> <p>4 but to the extent that my client knows the</p> <p>5 difference between the two, if there is a</p> <p>6 difference, he can go ahead and answer.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I don't know the difference between the</p> <p>9 two. I assume they were the same thing.</p> <p>10 BY MR. RICE:</p> <p>11 Q. If you take a look at Page 4 of</p> <p>12 Exhibit 1, in the middle of the page, the document</p> <p>13 dated July 5th of 2007, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you believe you received this</p> <p>16 document at or around that time?</p> <p>17 A. I couldn't tell you for sure. There's</p> <p>18 no way that I could tell you that.</p> <p>19 Q. Okay. And do you have any independent</p> <p>20 recollection of when you received this document?</p> <p>21 A. No, but I do recall receiving it.</p> <p>22 Q. Okay. What did you understand Exhibit 1</p> <p>23 to mean?</p> <p>24 A. Exactly what it said, not -- not to do</p>	<p>48</p> <p>1 We specifically talked about Genie</p> <p>2 Temporary Services because there was a case that</p> <p>3 had been heard, had an award made to a gentleman,</p> <p>4 and we wanted to go into that specific discussion.</p> <p>5 The arbitrator had affixed penalties on top of the</p> <p>6 award. And we said to them, "You understand that</p> <p>7 this is a building claim and we're under a cease</p> <p>8 and desist and, thus, we can do nothing about it?"</p> <p>9 BY MR. RICE:</p> <p>10 Q. Okay. So this conversation that you</p> <p>11 just mentioned with the Department of Insurance --</p> <p>12 A. Yes -- not with the Department of</p> <p>13 Insurance, with the office of the special deputy.</p> <p>14 Q. That occurred after you received the</p> <p>15 cease and desist order?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what was the resolution or</p> <p>18 the recommendation given to you after you had this</p> <p>19 conversation?</p> <p>20 A. Specifically about the Genie case?</p> <p>21 Q. Yes.</p> <p>22 A. I was told to forward the Genie case to</p> <p>23 the office of the special deputy and that they</p> <p>24 could go to the courts and get the penalties</p>



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<p>1 removed.</p> <p>2 Q. Okay. And do you know if that ever</p> <p>3 happened?</p> <p>4 A. That it was forwarded or that they had</p> <p>5 it removed?</p> <p>6 Q. Both.</p> <p>7 A. It was forwarded. Did they have them</p> <p>8 removed, I have no idea.</p> <p>9 Q. Did you discuss with the special deputy</p> <p>10 how to process or handle any claims in addition to</p> <p>11 the one you just spoke about with Genie?</p> <p>12 A. We had a discussion about the fact that</p> <p>13 we had to protect our reputation. We've been in</p> <p>14 business 20-plus years and we were concerned</p> <p>15 the damages to our reputation in terms of our loss</p> <p>16 of business. And so the discussion with the office</p> <p>17 of the special deputy is, you know, "Do you have an</p> <p>18 objection to us moving forward and working with our</p> <p>19 insureds who had outstanding claims to try to</p> <p>20 resolve those?"</p> <p>21 Q. Okay. My understanding from talking</p> <p>22 with Mr. McClure is that at some point, there was</p> <p>23 money held by McClure and Ciarrachi or McClure</p> <p>24 Associates or Brimar to the tune of approximately</p>	<p>49</p> <p>1 A. From the premiums from the insureds that</p> <p>2 we had written under the AEG program.</p> <p>3 Q. When -- okay, so just so I'm clear, we</p> <p>4 had a year period, approximately a year period</p> <p>5 where McClure was writing AEG business; okay?</p> <p>6 A. That's right.</p> <p>7 Q. During that time period, policy premiums</p> <p>8 were paid directly to McClure; right?</p> <p>9 A. That's right.</p> <p>10 Q. Okay. McClure would then deposit those</p> <p>11 funds into its client trust account?</p> <p>12 A. That's right.</p> <p>13 Q. And then the money over time accumulated</p> <p>14 to this 1.4 million?</p> <p>15 A. No. The money that we're talking about</p> <p>16 was segregated money after the cease and desist</p> <p>17 after the issues with the State developed, it was</p> <p>18 money that that perhaps two-month period of time,</p> <p>19 that that specific time frame money.</p> <p>20 Q. Okay. So the money that was collected</p> <p>21 by McClure and Associates during the year in which</p> <p>22 there didn't seem to be a problem with AEG --</p> <p>23 A. That's right.</p> <p>24 Q. -- that money would be forwarded on to</p>
<p>50</p> <p>1 \$1.3 million?</p> <p>2 A. That's right.</p> <p>3 Q. That money was eventually turned over to</p> <p>4 the special deputy; correct?</p> <p>5 A. That's right.</p> <p>6 Q. Were you -- was it your intention to use</p> <p>7 those funds to pay claims?</p> <p>8 A. We called the Department of Insurance</p> <p>9 first to receive -- this money that he's speaking</p> <p>10 about is insurance premiums that we had received</p> <p>11 from our policyholders.</p> <p>12 Q. Okay.</p> <p>13 A. So we called -- and as you know,</p> <p>14 premiums should go in your premium trust account.</p> <p>15 Q. Right.</p> <p>16 A. So we asked them permission to put it in</p> <p>17 a separate account because we were concerned</p> <p>18 commingling AEG premiums with our premium trust</p> <p>19 account. And we received permission to do that,</p> <p>20 and the objective initially was that that money</p> <p>21 would be used then to pay down claims that had</p> <p>22 existed for our policyholders.</p> <p>23 Q. Okay. I still don't know how the money</p> <p>24 accumulated that much --</p>	<p>52</p> <p>1 AEG as just any other premium would to a carrier;</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. It wasn't until the cease and</p> <p>5 desist order came down that you had a window now of</p> <p>6 time where the cease and desist order and this</p> <p>7 two-month period where you were collecting premiums</p> <p>8 but you didn't have anybody to give it to?</p> <p>9 A. Well, we could have given it to AEG.</p> <p>10 Q. Right. But you chose not to do that?</p> <p>11 A. We chose not to do that.</p> <p>12 Q. So at some point, then, you had this</p> <p>13 \$1.4 million and then you just gave it back to the</p> <p>14 special deputy; right?</p> <p>15 A. Not willingly, at their request.</p> <p>16 Q. Do you know what happened with that</p> <p>17 money?</p> <p>18 A. No idea.</p> <p>19 Q. Okay. Do you ever get reports from the</p> <p>20 special deputy?</p> <p>21 A. No.</p> <p>22 Q. Okay. Have you made any contacts</p> <p>23 yourself with the special deputy since the time in</p> <p>24 which the money has been released?</p>



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<p>53</p> <p>1 A. Many.</p> <p>2 Q. Okay. And what has been your general</p> <p>3 response from them?</p> <p>4 A. None.</p> <p>5 Q. Do you try to call them?</p> <p>6 A. Call them, write them.</p> <p>7 Q. Okay. And you've gotten zero response</p> <p>8 from them?</p> <p>9 A. Exactly.</p> <p>10 Q. Okay.</p> <p>11 A. And we've also worked with our attorneys</p> <p>12 to do the same thing.</p> <p>13 Q. Okay. Do you know how many policies</p> <p>14 McClure and Associates issued involving AEG a</p> <p>15 prior to the cease and desist order?</p> <p>16 A. No.</p> <p>17 Q. Were you aware of any problems with AEG</p> <p>18 and RCA between the time in which you were</p> <p>19 convinced after calling the Department of</p> <p>20 Insurance -- strike that for a second. Start over.</p> <p>21 You talked about your own suspicions</p> <p>22 that you tried to relieve by contacting RCA,</p> <p>23 Monument and then finally the Department of</p> <p>24 Insurance. You spoke to the Department of</p>	<p>55</p> <p>1 Q. So about approximately two months before</p> <p>2 they issued a cease and desist order, somebody</p> <p>3 comes here to tell you there's a problem?</p> <p>4 A. That's right.</p> <p>5 Q. Okay. Prior to the individual coming to</p> <p>6 your office in May of '07, did you have any</p> <p>7 inclination that there was a problem with RCA and</p> <p>8 AEG?</p> <p>9 A. Well --</p> <p>10 MR. SCOLARO: Objection to the extent it was</p> <p>11 asked and answered.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I've answered that question. I -- by</p> <p>14 contacting the State of Illinois, they specifically</p> <p>15 told me there wasn't.</p> <p>16 BY MR. RICE:</p> <p>17 Q. Okay. And I apologize, my question then</p> <p>18 is from the time that you convinced yourself that</p> <p>19 there was no problem by contacting the Department</p> <p>20 of Insurance to the time when somebody came here</p> <p>21 and told you there was a problem, you had no</p> <p>22 indication in between that period; right?</p> <p>23 A. No. As a matter of fact, I had</p> <p>24 alleviated my fears by having the Department of</p>
<p>54</p> <p>1 Insurance, they said there was no problem, so you</p> <p>2 went about your business and then, lo and behold,</p> <p>3 here comes the cease and desist order; right?</p> <p>4 A. No, person from the Department of</p> <p>5 Insurance came into the office.</p> <p>6 Q. Okay. So there's somebody -- there was</p> <p>7 something that happened in between you convincing</p> <p>8 yourself that everything was okay and then, lo and</p> <p>9 behold, there was a problem, i.e., the cease and</p> <p>10 desist order?</p> <p>11 A. That's right, yes.</p> <p>12 Q. What was that event?</p> <p>13 A. A person from either the office -- it</p> <p>14 was either from Department of Insurance or the</p> <p>15 office of the special deputy came in here and told</p> <p>16 us that they had been investigating the RCA/AEG</p> <p>17 relationship.</p> <p>18 Q. And do you know approximately when that</p> <p>19 person came to the office?</p> <p>20 A. Sometime in May of '07.</p> <p>21 Q. May of '07. Okay.</p> <p>22 So if -- using the date that's on</p> <p>23 Exhibit 1, which I believe was July of '07?</p> <p>24 A. July 5th of '07.</p>	<p>56</p> <p>1 Insurance telling me that there weren't problems.</p> <p>2 (WHEREUPON, a certain document</p> <p>3 marked Ciarrachi Deposition Exhibit</p> <p>4 No. 2, for identification, as of</p> <p>5 April 27, 2010.)</p> <p>6 BY MR. RICE:</p> <p>7 Q. Mr. Ciarrachi, I'm showing you what's</p> <p>8 been marked as Exhibit 2 for your deposition.</p> <p>9 take a moment to look at that and let me know</p> <p>10 you're finished.</p> <p>11 A. I'm familiar with it.</p> <p>12 Q. Okay. So that's my question, do you</p> <p>13 recognize the document?</p> <p>14 A. Yep.</p> <p>15 Q. Okay. And what is it?</p> <p>16 A. Stipulation and consent order.</p> <p>17 Q. Did you receive a copy of this document?</p> <p>18 A. Yes.</p> <p>19 Q. Is that your signature on Page 5 of</p> <p>20 Exhibit 2?</p> <p>21 A. One of them.</p> <p>22 Q. Do you recognize any other signatures on</p> <p>23 Page 5?</p> <p>24 A. Yes.</p>



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<p>1 Q. Which signature?</p> <p>2 A. Brian McClure, Barbara Gast.</p> <p>3 Q. Okay. And is that your signature next</p> <p>4 to Brimar Investigations, LTD?</p> <p>5 A. Yes.</p> <p>6 Q. What did you understand Exhibit 2 to</p> <p>7 mean when you signed it?</p> <p>8 A. To present to the office -- to -- to</p> <p>9 the -- I take it this was to the Department of</p> <p>10 Insurance -- or actually, it was -- our dealings</p> <p>11 were always with the office of the special deputy,</p> <p>12 despite the fact that this came from the Department</p> <p>13 of Insurance, to provide to them the itemizations</p> <p>14 that they requested on Page 3 of this document.</p> <p>15 They sent a -- the office of the special</p> <p>16 deputy sent a person in here who was in here about</p> <p>17 six or seven weeks looking through AEG files.</p> <p>18 Q. Okay. So is it fair to say that the</p> <p>19 document, Exhibit 2, which you signed, was</p> <p>20 essentially laying out the things you agreed to do</p> <p>21 in connection with the Department's investigation?</p> <p>22 A. Yes. That's the way I took it anyway.</p> <p>23 Q. So Items 1 through 8 listed on Page 3 of</p> <p>24 Exhibit 2 are the things that McClure and Brimar</p>	<p>57</p> <p>1 answer the question.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I don't recall. I mean, we had another</p> <p>4 attorney involved initially before the Scolaro</p> <p>5 firm, Jeff got involved, so we may have discussed</p> <p>6 it with them, I don't recall.</p> <p>7 BY MR. RICE:</p> <p>8 Q. Did you have any conversations with</p> <p>9 Mr. McClure about it?</p> <p>10 A. To the specific -- I imagine I did, but</p> <p>11 I could not specifically tell you that there was a</p> <p>12 time or place.</p> <p>13 Q. I want to talk just briefly about the</p> <p>14 claims -- do you want to take a break? I'm sorry.</p> <p>15 THE WITNESS: I do, I'd like to go to the</p> <p>16 washroom.</p> <p>17 (WHEREUPON, a short break was</p> <p>18 taken.)</p> <p>19 BY MR. RICE:</p> <p>20 Q. Before we took a break, I just wanted to</p> <p>21 ask you some questions about AEG claims</p> <p>22 Do you know approximately how many claims had</p> <p>23 made involving AEG?</p> <p>24 A. No.</p>
<p>58</p> <p>1 were to do in connection with the investigation?</p> <p>2 A. Mm-hmm.</p> <p>3 Q. Whether it be not doing something or</p> <p>4 doing something to help them?</p> <p>5 A. Yeah, mm-hmm.</p> <p>6 Q. What did you do when you -- strike that.</p> <p>7 Did you work with the Department to</p> <p>8 create this document or did they just create it and</p> <p>9 send it to you?</p> <p>10 A. They created it and sent it to me.</p> <p>11 Q. Did they have any conversations with you</p> <p>12 about it when you signed it?</p> <p>13 A. No.</p> <p>14 Q. Okay. Was it something that was just</p> <p>15 mailed to you, you signed it and returned it?</p> <p>16 A. I don't know if it was mailed or if it</p> <p>17 was brought by a special deputy, I don't recall,</p> <p>18 but I do remember receiving it. How, I don't know.</p> <p>19 Q. Before you signed it, did you discuss</p> <p>20 the document with anybody?</p> <p>21 MR. SCOLARO: Objection to the extent it calls</p> <p>22 for disclosure of attorney-client privileged</p> <p>23 conversations and/or documents.</p> <p>24 But to the extent it doesn't, you can</p>	<p>60</p> <p>1 Q. Okay. I was fortunate enough to come</p> <p>2 here on Friday and look at a number of bankers</p> <p>3 boxes, some of them which are in the room right</p> <p>4 now, which I understand to be boxes that contain</p> <p>5 all of the claim files that had been submitted --</p> <p>6 or all of the claims that had been submitted that</p> <p>7 involve AEG insurance. Do you understand that to</p> <p>8 be true with what's in these boxes?</p> <p>9 A. No, I have no idea what's in the boxes,</p> <p>10 I wasn't involved in that.</p> <p>11 Q. This is not something that Brimar would</p> <p>12 take care of?</p> <p>13 A. No -- well, I mean, the producers</p> <p>14 probably put these in there because the way we</p> <p>15 ultimately decided to go about resolving</p> <p>16 outstanding cases was that each producer would</p> <p>17 contribute towards any settlements that were made</p> <p>18 on behalf of the claims that were presented in the</p> <p>19 AEG program by our agency directly.</p> <p>20 Q. After the cease and desist was entered,</p> <p>21 Brimar and/or McClure received claims involving AEG</p> <p>22 insurance; is that fair?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. There was a time period when</p>



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<p style="text-align: right;">61</p> <p>1 you're receiving these claims that you felt you 2 couldn't do anything with them because your hands 3 were tied by the government; right? 4 A. We had a cease and desist. 5 Q. Okay. It's my understanding, though, at 6 some point, Brimar and/or McClure elected to start 7 paying these claims directly; is this accurate? 8 A. After they released the cease and desist 9 order. 10 Q. And do you know when that release 11 occurred? 12 A. No. 13 Q. Okay. Do you know approximately -- do 14 you have any recollection of when the first claim 15 was paid directly by Brimar and McClure and 16 Associates? 17 A. Let me back up a minute. When we had 18 the office of the special deputy in here, we had 19 reached a verbal agreement with them that we 20 be able to pay off of that \$1.5 million that we had 21 given them claims for the AEG/RCA program. 22 Q. Okay. 23 A. In the middle of their presence here, 24 and I want to say two or three weeks into it, the</p>	<p style="text-align: right;">63</p> <p>1 cannot send these checks out." 2 Q. Okay. So the best of your knowledge, no 3 claims were paid out of money that was eventually 4 turned over to the government; right? 5 A. By us, no. 6 Q. Okay. During that time period where you 7 were sending out checks -- or that you were going 8 to make payments but you decided not to send out 9 the checks because they told you not to, did you 10 ever end up writing personal checks to cover those 11 expenses? 12 A. No, not during that period of time. 13 Q. Okay. After the government seized the 14 money, the premium money, did McClure and 15 Ciarrachi, the funnel account, start making 16 payments to claims? 17 A. After we had the cease and desist order 18 removed, we started paying claims, yes. 19 Q. Okay. And you do not recall when that 20 was? 21 A. No, I don't know. 22 Q. Okay. 23 A. And I may add here that the reason we 24 made those payments was to limit damages.</p>
<p style="text-align: right;">62</p> <p>1 person who represented the office of the special 2 deputy received a phone call from his supervisor, 3 and they said do not send any of those checks out, 4 they could not be paid. 5 Q. Okay. So -- and again, I'm just trying 6 to understand the timeline, the cease and desist 7 order happens. 8 A. Yes. 9 Q. You're holding onto funds because you 10 have these people paying for premiums that you're 11 not going to send over to AEG; right? 12 A. That's right. 13 Q. At some point, you have a conversation 14 with the special deputy and they say, "We're going 15 to allow to you make payments to claims that are 16 coming in using those premiums;" correct? 17 A. That's right. 18 Q. And then at some point after that, they 19 say, "No more, give us the money, we don't want you 20 making any payments and any of the checks you 21 wrote, we're not cashing them"? 22 A. We actually -- I think we still got 23 copies of the checks we wrote, but they never were 24 sent out because they said at that point, "You</p>	<p style="text-align: right;">64</p> <p>1 Q. Okay. Who within this office is in 2 charge of handling these claims as they come in, 3 AEG claims? 4 A. You mean now or then? 5 Q. Let's do now first. 6 A. Well, I would see the majority of them, 7 I'd probably see all of them, as a matter of fact. 8 Q. Okay. When I looked at these boxes that 9 are in the room right now, these are documents that 10 were produced by McClure and Associates and/or 11 Brimar as claim files involving AEG. When I look 12 at the boxes, I see that on the outside of them 13 some of them are marked what I believe to be -- 14 might be overall clients. So you have like a PTO, 15 you have Genie, you've got -- I know there's some 16 cab company boxes back there, too. Do you know 17 approximately how many clients, and when I say 18 "clients," I mean just a company, AEG business was 19 placed with? 20 A. No. 21 Q. Okay. Do you think that number is 22 smaller than 10? 23 A. It would be larger than 10. 24 Q. Okay. I think the number was about 25</p>



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<p style="text-align: right;">65</p> <p>1 that I heard before. Does that sound about right?</p> <p>2 A. I wouldn't know.</p> <p>3 Q. Okay. Are you still receiving AEG</p> <p>4 claims today?</p> <p>5 A. I want to say rarely. I mean, there may</p> <p>6 be an isolated incident where you'll see that</p> <p>7 happen. But, typically, as you know, workers'</p> <p>8 compensation has a statute of limitations, and the</p> <p>9 statute of limitations for AEG business would have</p> <p>10 expired.</p> <p>11 Q. Okay.</p> <p>12 A. So if, hypothetically, a claim were out</p> <p>13 there under that coverage term, statute of</p> <p>14 limitations would have expired and they would not</p> <p>15 be able to present a claim.</p> <p>16 Q. Okay. So I know that when Mr. McClure</p> <p>17 was deposed, he talked about after the cease and</p> <p>18 desist order, there was an effort by McClure and</p> <p>19 Associates to either get new policies in place from</p> <p>20 a company, I think Dallas National, to either pick</p> <p>21 up where certain policies were to terminate or just</p> <p>22 switch the business over to them?</p> <p>23 A. Which we did.</p> <p>24 Q. Okay. So at this point, we're starting</p>	<p style="text-align: right;">67</p> <p>1 special deputy?</p> <p>2 A. About four times.</p> <p>3 Q. Okay. So you believe what is in your</p> <p>4 office, you have a duplicate of what the special</p> <p>5 deputy should have?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And all I'm trying to understand</p> <p>8 is there aren't two or three claims that were so</p> <p>9 enormous that you didn't even handle on your own,</p> <p>10 you just sent them right away?</p> <p>11 A. I don't believe so, no. I mean, our</p> <p>12 attempt originally would have been to negotiate out</p> <p>13 a claim that we felt we could handle, except for</p> <p>14 the Genie-Ramirez claim. Because of the penalties</p> <p>15 that had accumulated on that claim, we were told to</p> <p>16 send that one to the office of the special deputy</p> <p>17 and that they would have the ability to take that</p> <p>18 to the courts to have the penalties removed, which</p> <p>19 in my opinion and my opinion only, should never</p> <p>20 have been put on that case by the arbitrator</p> <p>21 because we were under a cease and desist order at</p> <p>22 that time.</p> <p>23 Q. And to the best of your knowledge,</p> <p>24 nothing has been done about that; correct?</p>
<p style="text-align: right;">66</p> <p>1 to hit the bookend of any claims that could come in</p> <p>2 involving AEG because the workers' compensation</p> <p>3 statute of limitations would basically prevent</p> <p>4 those people from making claims?</p> <p>5 A. Are you talking about today?</p> <p>6 Q. Today, correct.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So it's fair to say that we're</p> <p>9 hopefully on the back end of any new claims coming</p> <p>10 in; right?</p> <p>11 A. Hope so.</p> <p>12 Q. Okay. So any claims that had been made</p> <p>13 to you during the time period of the cease and</p> <p>14 desist order until this bookend we hope we're at,</p> <p>15 the claim files would be here; right?</p> <p>16 A. Yes. Well, either here or with the</p> <p>17 office of the special deputy.</p> <p>18 Q. Are there certain claims that Brimar</p> <p>19 forwarded directly on to the office of special</p> <p>20 deputy?</p> <p>21 A. We forwarded all of them, I believe.</p> <p>22 Q. Okay. So when I look at these claim</p> <p>23 files that are sitting here, are these the</p> <p>24 originals and you made copies and sent them to the</p>	<p style="text-align: right;">68</p> <p>1 A. That's right. It's my understanding</p> <p>2 that what was done about it is that the owner of</p> <p>3 Genie was advised by counsel out of Florida that he</p> <p>4 had an obligation to pay the total verdict of that</p> <p>5 claim and that he did, in fact, do that. And now</p> <p>6 he is proceeding in litigation against us for the</p> <p>7 total amount of monies.</p> <p>8 Q. Okay. After the money was turned over</p> <p>9 to the special deputy, the 1.4 million premium</p> <p>10 money --</p> <p>11 A. Yes.</p> <p>12 Q. -- at some point, you and Mr. McClure</p> <p>13 decided that you were going to start mitigating</p> <p>14 your damages by paying money directly out of the</p> <p>15 funnel account; correct?</p> <p>16 A. That's right.</p> <p>17 Q. We don't know what date that is, but a</p> <p>18 decision like that was made at some point?</p> <p>19 A. It was.</p> <p>20 Q. Okay. Do you know, why was that</p> <p>21 decision made to do that?</p> <p>22 A. To limit our damages, the Ramirez case</p> <p>23 being a case in point.</p> <p>24 Q. Okay. So the purpose of paying these</p>



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<p style="text-align: right;">69</p> <p>1 claims directly out of your own personal funds was 2 in an effort to reduce those claims before they got 3 too large? 4 A. Yes, and also to protect our reputation. 5 Q. When the business -- well, strike that. 6 Did McClure and/or Brimar have any 7 contracts with any of these clients wherein there 8 was an agreement to pay these claims in the event 9 the carrier become insolvent? 10 A. No, but as an agency, when we sell a 11 product, we're selling a promise to produce payment 12 of a claim when presented, so -- 13 Q. Okay. 14 A. And it was our attempt to fulfill that 15 promise. 16 Q. Okay. This was not a written contract, 17 though? 18 A. No. 19 Q. Okay. 20 A. Let me just go into that for just a 21 second because when you talk about a written 22 contract, an insurance policy is a written 23 contract, we would have had an insurance policy 24 with them, which basically would have said we're</p>	<p style="text-align: right;">71</p> <p>1 what you're receiving premium for. It's a -- 2 theoretically, it's a promise put on paper because 3 basically insurance is only selling a promise, you 4 promise to pay. 5 Q. And I appreciate your answer. What I'm 6 asking you, though, is that promise generally flows 7 from the carrier to the insured? 8 A. That's right. 9 Q. You don't have a separate contract, 10 Brimar or McClure, with the insured to make those 11 payments; is that correct? 12 A. No, that's right. 13 (WHEREUPON, a certain document was 14 marked Ciarrachi Deposition Exhibit 15 No. 3, for identification, as of 16 April 27, 2010.) 17 BY MR. RICE: 18 Q. Mr. Ciarrachi, I'm showing you what's 19 been marked as Exhibit 3 to your deposition. Just 20 take a moment to look at it and let me know when 21 you're finished. 22 A. I'm familiar with the document, yes. I 23 mean, a letter like this was sent probably to all 24 of the medical providers that were involved in</p>
<p style="text-align: right;">70</p> <p>1 going to honor and pay claims when they're 2 produced? 3 Q. Okay. Are you aware of that 4 being spelled out in any of the policies you've 5 ever written? 6 A. I think it's in every policy written. I 7 mean, your auto policy, your homeowner's 8 every policy written says in case of accident 9 and/or incident, you will make payment for -- 10 the carrier, will make payment for. 11 In this case, the carrier was listed as 12 insolvent, so we, as an agency, felt a moral 13 obligation and a business obligation to make 14 payment. 15 Q. Okay. And those are the same 16 Mr. McClure used during his deposition, a 17 obligation to make these payments. All I'm 18 to confirm is that there isn't any written 19 wherein you had a signature with the client 20 "We will pay this in the event AEG doesn't 21 claim"? 22 A. There is always a written obligation 23 when you issue a policy to make payment for 24 when presented, in an insurance policy.</p>	<p style="text-align: right;">72</p> <p>1 workers' compensation claims. 2 Q. Okay. So you do recognize it? 3 A. Mm-hmm, yes. 4 Q. Okay. And you indicated that Exhibit 3 5 is a document that would generally be sent to 6 medical providers for any of the claimants that 7 submitted claims involving workers' comp; is this 8 accurate? 9 A. Yes. 10 Q. Would Exhibit 3 have been prepared at or 11 near the time that it's dated at the top of Page 1? 12 A. I would imagine. 13 Q. Okay. And why was this document 14 prepared? 15 A. To inform the medical provider as to 16 what was going on. 17 Q. And when you say "what was going on," 18 what do you mean? 19 A. That there was a cease and desist and 20 the issues that had developed with the State, the 21 office of the special deputy, AEG and RCA. 22 Q. Okay. Who would typically prepare this 23 document? 24 A. Could be the producer, could be myself,</p>



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<p style="text-align: right;">73</p> <p>1 could have been Brian McClure.</p> <p>2 Q. Okay. Is this a -- is Exhibit 3 a --</p> <p>3 like a form letter?</p> <p>4 A. No -- well, somewhat. I mean, it --</p> <p>5 pretty much this is the language used but you could</p> <p>6 change maybe one or two words in there. As an</p> <p>7 example, Christopher Jones would not be -- you</p> <p>8 know, it might be -- here he's listed as the</p> <p>9 patient with a Social Security number and the</p> <p>10 account number, and those obviously would change.</p> <p>11 Who it was sent to would obviously be changed. But</p> <p>12 the crux of the actual correspondence probably</p> <p>13 would be consistently the same.</p> <p>14 Q. Okay. In the letter, Exhibit 3, there's</p> <p>15 a few names I just want to ask you who they were.</p> <p>16 Jeff Heller, do you recognize that name?</p> <p>17 A. Yes.</p> <p>18 Q. Who is that?</p> <p>19 A. A producer.</p> <p>20 Q. And he's a producer that works for</p> <p>21 McClure?</p> <p>22 A. That's right.</p> <p>23 Q. He does not work for Brimar?</p> <p>24 A. No, he does not.</p>	<p style="text-align: right;">75</p> <p>1 value to the medical that was performed to the</p> <p>2 given patient.</p> <p>3 Q. Okay. Are you still sending out letters</p> <p>4 like this, Exhibit 3, to people?</p> <p>5 A. Hopefully not. I mean, if we have, it's</p> <p>6 when one of those isolated cases come in, but I'm</p> <p>7 not aware of anything like this going on a regular</p> <p>8 basis, no.</p> <p>9 Q. Okay. This would be a letter you'd</p> <p>10 contact at the inception of the claim just to let</p> <p>11 them know that there's going to be some delays</p> <p>12 involved in this because of this issue?</p> <p>13 A. That's right.</p> <p>14 Q. Again, based solely on the number of</p> <p>15 tabs I see in these boxes, there's a significant</p> <p>16 amount of claimants that have made claims</p> <p>17 to AEG insurance. Do you know how many of</p> <p>18 claims are still open claims?</p> <p>19 A. As 100 percent -- I could only give you</p> <p>20 percentages.</p> <p>21 Q. Okay. Out of a percentage?</p> <p>22 A. Out of 100 percent of claims that would</p> <p>23 have existed, I would say perhaps 90 percent</p> <p>24 been resolved.</p>
<p style="text-align: right;">74</p> <p>1 Q. Does he still work for Mr. McClure?</p> <p>2 A. Yes.</p> <p>3 Q. Bill Wall, do you recognize that name?</p> <p>4 A. Yes.</p> <p>5 Q. Who is he?</p> <p>6 A. A producer.</p> <p>7 Q. Does he still work with Mr. McClure?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall ever getting a response to</p> <p>10 Exhibit 3 from Will County Medical Associates?</p> <p>11 A. I wouldn't -- there were so many of</p> <p>12 these, I couldn't tell you specifically if we did</p> <p>13 or we didn't.</p> <p>14 Q. Okay. As a general matter, do you</p> <p>15 recall getting responses of this type of letter?</p> <p>16 A. Me, specifically?</p> <p>17 Q. Yes.</p> <p>18 A. There would be times I would, there</p> <p>19 would be times I wouldn't. We ultimately turned</p> <p>20 over all of the medical bills to a resolution</p> <p>21 company for negotiation, and based on their</p> <p>22 personal contacts -- when I say "personal," I'm</p> <p>23 talking about telephonic contact, with the medical</p> <p>24 provider, we paid on their resolution of the dollar</p>	<p style="text-align: right;">76</p> <p>1 Q. 90 percent have been resolved?</p> <p>2 A. That's right.</p> <p>3 Q. I saw the name of what I believe to be</p> <p>4 the company you talked about in terms that you</p> <p>5 hired to help negotiate --</p> <p>6 A. Austin Resolution.</p> <p>7 Q. Austin Resolution. And that was the</p> <p>8 company you used for all of these?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you have a list of all of the</p> <p>11 claims that are closed and opened?</p> <p>12 A. I believe so. I can't say that for</p> <p>13 certainty.</p> <p>14 Q. Okay. I know that I've been working</p> <p>15 with your attorney to try to generate a list like</p> <p>16 that. Do you believe that you have the resources</p> <p>17 available to make a list like that if you don't?</p> <p>18 A. You know, the way it would -- the way it</p> <p>19 would happen -- the way I know the claims that --</p> <p>20 the producers contribute, as I said. Our</p> <p>21 bookkeeper would, when they are given their</p> <p>22 commissions on a monthly basis, reduce their</p> <p>23 commissions by any monies they have paid</p> <p>24 claims.</p>



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<p>77</p> <p>1 Q. Okay.</p> <p>2 A. So she would have those records, which</p> <p>3 would tell you -- if a case was settled at the</p> <p>4 Industrial Commission, there would be a contract</p> <p>5 drawn up, which, of course, satisfies both the</p> <p>6 respondent and the petitioner.</p> <p>7 Q. Sure.</p> <p>8 A. And that contract would exist within the</p> <p>9 file or the statute of limitations would have run</p> <p>10 on the file. So for conclusion of a claim, one of</p> <p>11 those two would have to exist.</p> <p>12 Q. Okay. I notice that in my review of a</p> <p>13 portion of these boxes, and again, there was, I</p> <p>14 believe, 12 bankers boxes full of claims, in my</p> <p>15 brief review of at least three boxes, I saw inside</p> <p>16 of there generally a number that represented the</p> <p>17 amount of outstanding medical bills. And then</p> <p>18 there would be on the inside sleeve of each file</p> <p>19 jacket a list of checks that were written by</p> <p>20 McClure and Ciarrachi, the check number, the</p> <p>21 amount. It was difficult for me to deduce whether</p> <p>22 the claim was closed, whether the claim had been</p> <p>23 settled for something less than the amount that</p> <p>24 represented by the medical or the time -- you</p>	<p>79</p> <p>1 may have concluded between you and Mr. McClure that</p> <p>2 there was a -- it was a questionable claim; right?</p> <p>3 A. That's right.</p> <p>4 Q. And so you elected to retain counsel to</p> <p>5 defend those claims; correct?</p> <p>6 A. That's right.</p> <p>7 Q. Okay. And of the 10 percent that are</p> <p>8 open, do you believe all 10 percent of those are</p> <p>9 those types of claims?</p> <p>10 A. The majority of them, 98 percent of</p> <p>11 them.</p> <p>12 Q. They're the ones that you're questioning</p> <p>13 the legitimacy of the claim?</p> <p>14 A. That's right.</p> <p>15 Q. Aside from the money that came out of</p> <p>16 the McClure and Ciarrachi funnel account, did you</p> <p>17 receive any other funds from any other source to</p> <p>18 help pay those claims?</p> <p>19 A. No.</p> <p>20 Q. And the money that's with -- that is</p> <p>21 currently in or that was used to pay the AEG claims</p> <p>22 out of the funnel account is all money that is</p> <p>23 either yours or Mr. McClure's personally?</p> <p>24 A. That's right.</p>
<p>78</p> <p>1 lost time.</p> <p>2 So my question to you before was is</p> <p>3 there a way to calculate, one, whether the file was</p> <p>4 closed or still open, and ultimately, the amount of</p> <p>5 money that came out of this office to pay it?</p> <p>6 A. Yeah, well, we wrote out of our funnel</p> <p>7 account ultimately the monies that we paid out, so</p> <p>8 that calculation should be fairly easy to</p> <p>9 determine.</p> <p>10 Q. Okay.</p> <p>11 A. As to whether a file is open or closed,</p> <p>12 there's only two ways to do that in a workers' comp</p> <p>13 file, the statute of limitations has run or if you</p> <p>14 have a settlement for contract at the Illinois</p> <p>15 Industrial Commission.</p> <p>16 Q. Okay. And again, using your percentage,</p> <p>17 you think there's maybe only about 10 percent left</p> <p>18 that might still be lingering open?</p> <p>19 A. Yeah, there are one or two cab claims</p> <p>20 that I feel are fraudulent that we are not</p> <p>21 voluntarily paying and we're defending.</p> <p>22 Q. Okay. I believe -- that's a good point.</p> <p>23 I believe Mr. McClure also mentioned that, that</p> <p>24 there are certain claims that have come in that you</p>	<p>80</p> <p>1 Q. Okay. There are no other premium monies</p> <p>2 coming in the door for outstanding AEG claims;</p> <p>3 correct?</p> <p>4 A. No.</p> <p>5 Q. Were you in any way involved in</p> <p>6 reporting what I'm going to define to be the loss,</p> <p>7 meaning this AEG-related issue, to American</p> <p>8 Automobile Insurance Company, the carrier for</p> <p>9 Mr. McClure?</p> <p>10 A. No.</p> <p>11 Q. So Mr. McClure would handle all of that?</p> <p>12 A. That's right.</p> <p>13 Q. Okay. Are you familiar with Lancer</p> <p>14 Claim Services?</p> <p>15 A. Only in that I saw a letter from them.</p> <p>16 I assume they were a TPA -- I'm not even sure how</p> <p>17 American Automobile is involved with Fireman's</p> <p>18 Fund. I thought our E&O was with Fireman's Fund.</p> <p>19 Q. Right.</p> <p>20 A. And I assume that American Automobile is</p> <p>21 a program business spun off of Fireman's Fund and</p> <p>22 that Lancer is a TPA hired by American Automobile.</p> <p>23 Q. That is generally correct, yes.</p> <p>24 A. Okay.</p>



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<p>81</p> <p>1 Q. So you were not involved in notifying 2 American Automobile of the issue, it was 3 Mr. McClure. I assume then, also, other than 4 getting the letter you mentioned from Lancer, you 5 didn't have any direct contact from Lancer either? 6 A. No, I did not. 7 Q. Okay. 8 A. I take that back. I had one 9 conversation, a conference call with somebody from 10 Lancer with Brian McClure. And I don't recall who 11 the person was. I cannot even recall the context 12 of the conversation, other than trying to explain 13 to him the relationship of AEG, RCA and these 14 claims. And he had a very difficult time 15 understanding it. 16 Q. Okay. There is -- were you ever 17 involved in, other than that one conversation, any 18 discussions with AAIC or Lancer about your and 19 Mr. McClure's intent to seek reimbursement for the 20 funds you've been paying directly out of your own 21 pocket? 22 A. No. I've had discussions with Jeff 23 Scolaro and the law firm about that but never with 24 Lancer and/or the program business.</p>	<p>83</p> <p>1 Q. Are you familiar with Genie as a client 2 of the AEG insurance? 3 A. Yes. 4 Q. Do you know approximately how many 5 workers within Genie have made claims under the AEG 6 program? 7 A. No, I do not know the number. 8 Q. Okay. Do you know if any of the claims 9 that were made by workers related to Genie, whether 10 any of those claims were paid? 11 A. Yes, they were. 12 Q. Some were? 13 A. Yes. 14 Q. Okay. Do you know, other than the one 15 that we talked about earlier that hasn't been paid, 16 do you know that any of them that haven't been 17 paid? 18 A. Well, they had -- AEG and RCA and Genie 19 had a relationship where they initially were sold a 20 policy at one -- I believe -- I'm going off of 21 memory here, I believe they were sold at one 22 deductible level. They had an onslaught of claims 23 on the initiation of the coverage. So AEG came to 24 us and said we want to cancel the risk. At that</p>
<p>82</p> <p>1 Q. Okay. Do you know approximately how 2 much money has been paid out of the McClure and 3 Ciarrachi funnel account to satisfy AEG claims? 4 A. Approximately, no, but I could give you 5 a value above a half a million dollars. 6 Q. Okay. And, again, that would have been 7 approximately a half a million dollars to satisfy 8 approximately 90 percent of the claim? 9 A. Yes. 10 Q. So the 10 percent that are still out 11 there, we don't know what that amount is going to 12 be? 13 A. That's right. 14 Q. Okay. 15 A. And those are some heavy claims that are 16 out there. When I say "heavy," I'm talking about 17 should we take the case to the Industrial 18 Commission and lose, there's one or two claims that 19 could be above 100,000 each. 20 Q. Okay. Part of the subject matter of 21 this lawsuit involves the claim made by Genie 22 relating to the one that you spoke about earlier 23 involving the penalties and such? 24 A. Yes.</p>	<p>84</p> <p>1 point, we discussed with them an option to 2 canceling the risk, which was raising the 3 deductible. 4 So we went out to their Joliet office 5 and had a conversation with, I believe, their risk 6 manager or the manager from that office who 7 purchased the insurance product and said if we 8 have -- if we're going to keep this insurance in 9 force, AEG has said we must raise your deductible. 10 Q. Okay. 11 A. And he agreed to raise the deductible, I 12 believe it's to \$25,000. 13 Q. Okay. So initial -- just so I'm 14 understanding correctly, initially Genie was placed 15 with AEG Insurance at a certain deductible, too 16 many claims were coming in and AEG felt that it 17 either -- something had to be done and it was 18 either cancelling the program or raising the 19 deductible -- 20 A. Yes. 21 Q. -- so they at least had their own -- 22 A. We talked them into raising the 23 deductible. 24 Q. Okay. So it's fair to say, then, that</p>



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<p>85</p> <p>1 every -- any claim involving Genie that came in 2 after the raise of the deductible was a claim in 3 excess of \$25,000? 4 A. No, no, there were some under 25. 5 Q. Okay. Was it a -- was it a deductible 6 that was eroded by any claim or did every one claim 7 have to exceed \$25,000? 8 A. Every one would have to exceed 25,000. 9 Q. Okay. So if a claim was made that was 10 under \$25,000, you would still administer the 11 claim? 12 A. We'd administer it, go back to Genie and 13 say -- 14 Q. Pay this directly? 15 A. Pay this directly. 16 Q. Okay. So -- 17 A. Or defend it directly. 18 Q. Okay. So Genie would still use you for 19 purposes of either negotiating down the claim 20 and/or defending it because this is a ridiculous 21 claim? 22 A. Yes. 23 Q. Okay. If the claim exceeded \$25,000 24 deductible and you decided to pay the claim, and it</p>	<p>87</p> <p>1 finished. 2 A. Yes. This -- the entire document you 3 want me to review or just a copy of the letter? 4 Q. If you could just -- I don't want you to 5 read every page of it, I just want -- 6 A. I'm familiar with it because this is 7 something that -- I mean, I was extremely upset 8 about it because I thought the arbitrator 9 overstepped his bounds. 10 Q. Okay. 11 A. And he went and he affixed penalties in 12 something under a cease and desist order. 13 Q. Okay. So you obviously recognize 14 Exhibit No. 4; is that correct? 15 A. Yes. 16 Q. And what is it? 17 A. It's a notice that they've affixed 18 penalties because the original award wasn't 19 Q. And I guess a better question would 20 been what is Page 1 of Exhibit 4, is that a letter 21 you prepared? 22 A. Yes, but to the office of the special 23 deputy. 24 Q. And when was this letter prepared?</p>
<p>86</p> <p>1 was in excess of 25, you would still go back to 2 them to pay the 25, you'd pay the difference? 3 A. That's right. 4 Q. Okay. Do you have any independent 5 recollection of when Mr. McClure notified AAIC 6 about Genie's claim, and the one I'm referring to 7 is the one that we've talked about before, the one 8 that's still outstanding? 9 A. I could only give you an assumption, and 10 I know that's not the proper thing to do in a 11 deposition, but it's all I can do. And I can tell 12 you that it's probably after we received notice 13 when we were under cease and desist that penalties 14 had been affixed to an award made while a cease 15 desist was under way. 16 Q. Okay. 17 (WHEREUPON, a certain document was 18 marked Ciarrachi Deposition Exhibit 19 No. 4, for identification, as of 20 April 27, 2010.) 21 BY MR. RICE: 22 Q. I'm showing you what's been marked as 23 Exhibit 4 for your deposition. Take a moment to 24 review it and just let me know when you're</p>	<p>88</p> <p>1 A. It's dated January 30th, and that was 2 after I had our -- remember I talked about a 3 discussion we had with the office of the deputy 4 special about the Ramirez case and the fact they 5 could have penalties taken off, so that was when I 6 sent the file over to them per my discussion with 7 their vice president of claims. 8 Q. Okay. Is that your signature on Page 1 9 of Exhibit 4? 10 A. No, that's not mine. I imagine it's my 11 secretary's. 12 Q. Did you authorize her to sign this 13 letter for you? 14 A. I'm sure I did. 15 Q. Did you ever receive a response from the 16 special deputy -- 17 A. No. 18 Q. Let me just finish my question. Did you 19 ever receive a response to Exhibit -- from 20 Exhibit 4 from the special deputy? 21 A. No. 22 Q. Okay. Did you ever follow up with him 23 about this letter? 24 A. In phone conversations and through our</p>



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<p>1 attorney. 2 Q. And still to this day, you've never 3 received a response? 4 A. No. 5 Q. And you have no independent knowledge as 6 you sit here today what their response has been as 7 to this particular claim? 8 A. That's right. 9 Q. Again, I just want to make sure I 10 understand, those files that are closed involving 11 AEG claims, you had indicated there's only two ways 12 a file can be closed, either the statute of 13 limitations has expired or you get essentially a 14 settlement agreement? 15 A. Yes. 16 Q. And the agreement would be signed by 17 Ciarrachi and McClure as well as the claimant, or 18 who would all be a part of that -- 19 A. I basically would sign off as a 20 representative of Brimar Administration and the 21 petitioner attorney would sign off. 22 Q. Okay. 23 A. And the client, the injured employee. 24 Q. Okay. Because I saw, again, in the</p>	<p>1 determination as far as what coverage he's 2 involved, and it calls for a legal conclusion. But 3 to the extent that he understands the question, he 4 can go ahead and answer. 5 BY THE WITNESS: 6 A. Well, his policy that he purchased was 7 for the -- the administration and the placing of 8 coverage. It was a policy that it was my 9 assumption covered the entire LLC of our entire 10 business operation. 11 BY MR. RICE: 12 Q. Okay. Have you ever seen a copy of the 13 AAIC policy? 14 A. No, and that was an issue that he and I 15 discussed because no policy was ever issued to 16 As I understood it, we merely received a 17 certificate of insurance and never the actual 18 policy. 19 Now, I understand, after we complained 20 about it, you can now go on-line and secure a copy 21 of the policy. But at the time we wrote that 22 policy, we were never actually given a physical 23 policy. 24 Q. Were you in any way involved in</p>
<p>1 cover of the few files -- or the files that I did 2 review, I saw on the first inside of each file 3 jacket, on some of them, essentially what I would 4 believe to be a settlement agreement. Does that 5 sound familiar to you? 6 A. Yeah, you would see a settlement 7 agreement. It's got like a pink colored sheet -- 8 Q. Yes. 9 A. Mm-hmm. 10 Q. Were you in any way involved in the 11 procurement of the AAIC policy that Mr. McClure 12 purchased, which is the subject of this lawsuit? 13 A. No. 14 Q. So McClure bought his own insurance for 15 his business and you weren't involved in that? 16 A. Well, he bought coverage for our entire 17 operation. 18 Q. Okay. So does Brimar have any other 19 insurance? 20 A. No. 21 Q. So it's your understanding that Brimar 22 would be covered under Mr. McClure's policy? 23 MR. SCOLARO: Objection to the extent my 24 client is not -- cannot make the legal</p>	<p>1 requesting a copy of the policy? 2 A. Before or after? 3 Q. Well, let's do this: When Mr. McClure 4 enrolled in the AAIC program, were you -- you 5 weren't involved in that process; right? 6 A. No. 7 Q. Okay. Have you ever made a request to 8 AAIC, you personally, asking for a copy of the 9 policy -- 10 A. No. 11 Q. -- at any point? 12 A. Not personally. I've gone through Brian 13 after the fact and said to Brian, "We need a copy 14 of this policy and we should have had a copy of 15 this policy." 16 Q. And when you say "after the fact," you 17 mean after what? 18 A. After all of the claims had occurred and 19 after all of the cease and desist had occurred and 20 the issues of AEG and RCA had come on the table. 21 MR. RICE: I don't have any further questions. 22 MR. SCOLARO: I do. I have a few points I 23 want to clarify, but -- 24 MR. RICHARDS: Go ahead. I'm not sure I'm</p>



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<p>1 going to have any.</p> <p>2 CROSS EXAMINATION</p> <p>3 BY MR. SCOLARO:</p> <p>4 Q. Dave, we talked about -- or Dana talked</p> <p>5 about as far as the AAIC policy, that it was -- and</p> <p>6 I believe you testified to the fact that Brian was</p> <p>7 the one that procured that policy, and when I say</p> <p>8 "Brian", I mean Brian McClure. That's correct?</p> <p>9 A. That's right.</p> <p>10 Q. And as you understand it, any damages</p> <p>11 that arose pursuant to this matter and pursuant to</p> <p>12 the AEG insolvency would have been damages as a</p> <p>13 result of McClure's placement of insurance with</p> <p>14 that company, being AEG?</p> <p>15 A. That's right.</p> <p>16 Q. And also that those damages were</p> <p>17 performed by McClure and Associates or their</p> <p>18 and those agents are licensed brokers and insurance</p> <p>19 agents; correct?</p> <p>20 A. That's right.</p> <p>21 Q. Okay. Now, with respect to those</p> <p>22 damages and with respect to payments and claims</p> <p>23 that were settled on those things, Dana also</p> <p>24 mentioned this was something that Brian had talked</p>	<p>1 and so I'm assuming she would know that.</p> <p>2 Q. Okay. Now, with respect to the</p> <p>3 reason -- with respect to settling of claims, we</p> <p>4 talked earlier, and I believe you testified to the</p> <p>5 fact that, in part, it was a moral obligation you</p> <p>6 felt to step in and pay these claims; correct?</p> <p>7 A. Yes.</p> <p>8 Q. But would it also be fair to say that</p> <p>9 you also felt that ultimately your clients would --</p> <p>10 were threatening to go after you for that money as</p> <p>11 well?</p> <p>12 MR. RICE: Objection: Calls for speculation.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I will answer the question this way in</p> <p>15 due respect to his -- the answer to that question</p> <p>16 is we were concerned that there would be a</p> <p>17 value to every claim as time goes on, because in</p> <p>18 40-plus years in the insurance business, claims</p> <p>19 don't decrease in value, they increase in value.</p> <p>20 BY MR. SCOLARO:</p> <p>21 Q. And would you say that the Jason Ramirez</p> <p>22 case is indicative of that?</p> <p>23 A. Absolutely.</p> <p>24 Q. And with respect to the Jason Ramirez</p>
<p>1 about, there's a McClure and Ciarrachi funnel</p> <p>2 account is what we've termed it in this deposition?</p> <p>3 A. That's right.</p> <p>4 Q. Now, I want to clarify something. I</p> <p>5 think Dana referred to it a couple of times as</p> <p>6 personal funds. But that's -- to that extent,</p> <p>7 those funds, and it was something I believe you</p> <p>8 alluded to, those funds are not personal in the</p> <p>9 sense that they're Brian McClure and Dave</p> <p>10 Ciarrachi's personal money; is that correct? In</p> <p>11 other words, and maybe this is a better question,</p> <p>12 the McClure and Ciarrachi funnel account consists</p> <p>13 of funds from B.D. McClure and Associates and</p> <p>14 Brimar Administration, Inc.; correct?</p> <p>15 A. That's right.</p> <p>16 Q. And you're not -- because you're not an</p> <p>17 accountant, you do not -- you're not aware of the</p> <p>18 specific dynamic of which funds come from -- how</p> <p>19 much funds are coming from Brimar, how much of the</p> <p>20 funds are coming from McClure; is that correct?</p> <p>21 A. No, I think Barb Gast would be the only</p> <p>22 person who would know that. I would assume she</p> <p>23 would know that, she's the keeper -- she's the --</p> <p>24 she does the billing and she does the receivables</p>	<p>1 case, Genie had actually tendered that claim to you</p> <p>2 for payment; is that not correct?</p> <p>3 A. They tendered the claim as a first</p> <p>4 report of injury.</p> <p>5 Q. Sure. And then thereafter, once AEG</p> <p>6 went insolvent, it was also then tendered to B.D.</p> <p>7 McClure and Associates for payment?</p> <p>8 A. After it went -- after -- the case was</p> <p>9 filed at the Illinois Industrial Commission. There</p> <p>10 was a hearing heard at the Illinois Industrial</p> <p>11 Commission during the period of the cease and</p> <p>12 desist. And during that period of time, the</p> <p>13 arbitrator made an award. There could be no</p> <p>14 payment made by anybody when the cease and desist</p> <p>15 occurred, and for some reason the arbitrator</p> <p>16 awarded penalties to Mr. Ramirez because there's a</p> <p>17 time frame when you must honor the payment of any</p> <p>18 award made at the Illinois Industrial Commission.</p> <p>19 I believe that's a 30-day period. And after</p> <p>20 30 days, they have the right to affix penalties.</p> <p>21 When a cease and desist has occurred, we</p> <p>22 had no option to pay any claim and no action could</p> <p>23 be taken forth on any claim of the AEG/RCA program.</p> <p>24 Yet he saw fit to award penalties.</p>



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<p>97</p> <p>1 Q. Okay. Understood.</p> <p>2 And then once those penalties were</p> <p>3 awarded, is it also accurate to say, then, that</p> <p>4 Genie and/or Dale Sippel tendered this -- the award</p> <p>5 to you requesting that Brian -- that B.D. McClure</p> <p>6 and Associates pay that?</p> <p>7 A. That's right.</p> <p>8 Q. Okay. And lastly, Dana had asked a</p> <p>9 couple questions about how many alternatives were</p> <p>10 presented to clients of B.D. McClure and Associates</p> <p>11 with respect to potential alternatives as far as an</p> <p>12 alternative to AEG and things like that. Those</p> <p>13 would be questions better suited for -- would it be</p> <p>14 accurate to say that those questions would be</p> <p>15 better suited for a producer, such as those</p> <p>16 employed by B.D. McClure and Associates?</p> <p>17 A. Well, the fact that I don't have a</p> <p>18 producer's license doesn't mean that I couldn't</p> <p>19 answer those questions because, obviously, I'm</p> <p>20 familiar with production as well as administration.</p> <p>21 Q. Sure.</p> <p>22 A. So I could quantify an insured as to</p> <p>23 what his options are, as could any producer.</p> <p>24 Q. Okay. But the ones, then, offering</p>	<p>99</p> <p>1 there's some issues now that are developing in that</p> <p>2 the law firms are threatening not to represent</p> <p>3 Genie because they haven't made payments of the</p> <p>4 legal bills which fall into the deductible.</p> <p>5 Q. Do you still have copies of the legal</p> <p>6 bills that you just referred to that you've</p> <p>7 tendered to Genie?</p> <p>8 A. I'm sure they're in the files.</p> <p>9 MR. RICHARDS: Okay. We would ask that they</p> <p>10 be produced to our office so we can follow up.</p> <p>11 MR. SCOLARO: And that's something --</p> <p>12 MR. RICHARDS: Something Jeff and I have</p> <p>13 spoken about a little bit.</p> <p>14 MR. SCOLARO: Correct.</p> <p>15 MR. RICE: I will say for the record that in</p> <p>16 my brief review of some of those files, I have seen</p> <p>17 attorney bills. I can't say that I saw any</p> <p>18 relating to particularly Genie, but I have seen the</p> <p>19 Scopolias firm letterhead in there on a few of</p> <p>20 them, so those are things that I know have been</p> <p>21 kept in some of these files.</p> <p>22 MR. SCOLARO: That's something that Paul and I</p> <p>23 have also spoken about and continue to speak about</p> <p>24 even now.</p>
<p>98</p> <p>1 ultimately those policies would be the producer</p> <p>2 employed by or an agent of B.D. McClure and</p> <p>3 Associates?</p> <p>4 A. That's correct.</p> <p>5 MR. SCOLARO: Okay. That's all I wanted.</p> <p>6 MR. RICHARDS: I have one follow-up and it</p> <p>7 relates to Genie in particular.</p> <p>8 CROSS EXAMINATION</p> <p>9 BY MR. RICHARDS:</p> <p>10 Q. Is Brimar continuing to administer</p> <p>11 claims for Genie that were incurred while AEG was</p> <p>12 on the risk?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have a ballpark idea,</p> <p>15 Mr. Ciarrachi, of how many claims Brimar is</p> <p>16 continuing to handle?</p> <p>17 A. There's a couple out there that we have</p> <p>18 with a law firm named Powers & Cronin, and also</p> <p>19 with Scopolias (phonetic). They're both workers'</p> <p>20 compensation firms.</p> <p>21 Q. Okay.</p> <p>22 A. And we have -- we have this deductible</p> <p>23 issue, and we have tendered their legal bills to</p> <p>24 Genie noting that they are asking for payment. So</p>	<p>100</p> <p>1 THE WITNESS: I think some of them that you've</p> <p>2 sent checks on and some you have not. That's what</p> <p>3 I know about --</p> <p>4 MR. SCOLARO: I don't know if Paul is --</p> <p>5 that's something Paul has to check with and that's</p> <p>6 kind of where we are with that, so --</p> <p>7 BY MR. RICHARDS:</p> <p>8 Q. Mr. Ciarrachi, have you had any further</p> <p>9 contact with Mike Ward since any of this dispute</p> <p>10 arose?</p> <p>11 A. No.</p> <p>12 Q. Is Mike Ward continuing in the PEO</p> <p>13 business, do you know?</p> <p>14 A. I don't know, but just as a personal</p> <p>15 aside, I will say that I -- to my amazement, this</p> <p>16 is a man we gave over \$6 million to, and to my</p> <p>17 amazement, nothing has happened to Mike Ward.</p> <p>18 Q. When you say nothing has happened, he</p> <p>19 hasn't been indicted or thrown in jail or --</p> <p>20 A. He hasn't been indicted, the IRS hasn't</p> <p>21 gone after him, the Department of Insurance hasn't</p> <p>22 gone after him, the office of the special deputy</p> <p>23 hasn't gone after him, to the best of my knowledge.</p> <p>24 Q. Okay. But you don't know whether he</p>



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<p>1 continues to operate --</p> <p>2 A. No.</p> <p>3 Q. -- in the PEO industry, do you?</p> <p>4 A. No, I don't.</p> <p>5 Q. To your knowledge, do either Brimar or</p> <p>6 McClure and Associates place any business presently</p> <p>7 with any PEO?</p> <p>8 A. No.</p> <p>9 Q. At the time that you are placing</p> <p>10 insurance with the AEG program, at that point in</p> <p>11 time or prior to that, had you ever been placing</p> <p>12 business with a PEO?</p> <p>13 A. No.</p> <p>14 Q. Did you know back then that AEG was a</p> <p>15 professional employer organization?</p> <p>16 A. At the time we placed business, yes,</p> <p>17 because they have a license -- the State of</p> <p>18 Illinois issues a license for that, and we checked</p> <p>19 to make certain that they were licensed by the</p> <p>20 State.</p> <p>21 Q. As a PEO?</p> <p>22 A. That's right.</p> <p>23 Q. Okay. Do you have any knowledge as to</p> <p>24 whether or not the Illinois Insurance Guaranty Fund</p>	<p>1 excess policy written through RCA, and then you</p> <p>2 always have the -- and I -- I know for a fact that</p> <p>3 RCA was admitted and licensed in the State of</p> <p>4 Illinois. If they're admitted and licensed in the</p> <p>5 State of Illinois, they would pay taxes towards the</p> <p>6 Guaranty Fund. So it then would be my assumption</p> <p>7 that it would fall to the Guaranty Fund. And this</p> <p>8 is all assumption, but that's the way I felt the</p> <p>9 tiers would work.</p> <p>10 Q. In the situation that we have here,</p> <p>11 though, where AEG was declared insolvent but RCA</p> <p>12 was not, would you have an understanding as to what</p> <p>13 obligation, if any, the Guaranty Fund would have in</p> <p>14 this situation?</p> <p>15 A. It's my understanding that RCA is</p> <p>16 claiming there wasn't a relationship with AEG, and</p> <p>17 to that end, I actually called an attorney in New</p> <p>18 York who Mike Ward gave me, stating that he could</p> <p>19 clarify the issues between AEG and RCA. I talked</p> <p>20 to him three or four different occasions, and he</p> <p>21 told me that there was a discussion -- a dispute</p> <p>22 between the two of them, but he assured me that</p> <p>23 that was going to be resolved and there were no</p> <p>24 issues. I cannot recall his name right now, but</p>
<p>1 would step in when a PEO goes insolvent, as</p> <p>2 compared to an insurance company going</p> <p>3 A. I can't answer that for sure, but it was</p> <p>4 my understanding that when you have a fronting</p> <p>5 company and then an excess carrier, that it</p> <p>6 fall from the fronting company to the excess</p> <p>7 company to the Guaranty Fund. That would be</p> <p>8 understanding of the stepladder of claims as to</p> <p>9 they would fall.</p> <p>10 MR. SCOLARO: And then that was your</p> <p>11 was that, then, Dave, your understanding with</p> <p>12 respect to this situation with AEG and RCA?</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. RICHARDS:</p> <p>15 Q. So, in other words, when AEG is</p> <p>16 insolvent, the risk would go to RCA?</p> <p>17 A. Yes.</p> <p>18 Q. Before it would go to the Illinois</p> <p>19 Insurance Guaranty Fund?</p> <p>20 A. Yeah, because the way I understood the</p> <p>21 program is that there was a million dollar</p> <p>22 deductible taken by a syndicate group of people,</p> <p>23 the AEG group, so they're responsible for the</p> <p>24 million dollars of the claim. Then there was a</p>	<p>1 I'm sure I've got that somewhere where I've got the</p> <p>2 name of the attorney involved.</p> <p>3 MR. RICHARDS: That's all I have.</p> <p>4 MR. RICE: I just have two follow-up. Do you</p> <p>5 have --</p> <p>6 MR. SCOLARO: No, that's all I have.</p> <p>7 REDIRECT EXAMINATION</p> <p>8 BY MR. RICE:</p> <p>9 Q. Counsel had asked you about the reasons</p> <p>10 why you decided to pay these claims, and your</p> <p>11 response was that to mitigate the damages. Do you</p> <p>12 remember that?</p> <p>13 A. Yes.</p> <p>14 Q. Did anybody or any of the clients that</p> <p>15 submitted claims ever threaten to sue you or</p> <p>16 Mr. McClure if you didn't make the payment?</p> <p>17 A. I think -- Genie -- Genie through their</p> <p>18 attorney.</p> <p>19 Q. Okay. Aside from Genie making that</p> <p>20 representation to you, did any other client do</p> <p>21 that?</p> <p>22 A. No, because we paid them all.</p> <p>23 Q. Okay. Aside from the one lawsuit where</p> <p>24 Genie just filed, have you or Mr. McClure or Brimar</p>



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<p>1 or McClure and Associates ever been named as a 2 defendant involved in a case like this? 3 A. No. 4 MR. RICE: Okay. I have no further questions. 5 MR. SCOLARO: I don't either. 6 MR. RICE: Do you want to waive signature, 7 reserve it? 8 MR. SCOLARO: Dave, to explain, you have the 9 opportunity to review the transcript for any errors 10 or things that you would like to clarify -- well, 11 not clarify, any errors in the transcript. It 12 wouldn't be an opportunity to change anything 13 you've said but to correct any potential transcript 14 errors. It's our recommendation typically to waive 15 signature. 16 THE WITNESS: Then we'll waive it. 17 MR. SCOLARO: Okay. 18 FURTHER DEPONENT SAITH NOT. 19 20 21 22 23 24</p>	<p>105</p> <p>1 IN WITNESS WHEREOF, I do hereunto set my 2 hand and affix my seal of office at Woodridge, 3 Illinois, this 23rd day of August, A.D. 2010. 4 5 6 7 8 Notary Public, DuPage County, Illinois. 9 10 11 ALICE M. SCHWINGER, CSR No. 84-2913 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>107</p>
<p>106</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF DUPAGE) 4 I, ALICE M. SCHWINGER, CSR No. 84-2913, 5 a Notary Public within and for the County of 6 DuPage, State of Illinois, and a Certified 7 Shorthand Reporter of said state, do hereby 8 certify: 9 That previous to the commencement of the 10 examination of the witness, the witness was duly 11 sworn to testify the whole truth concerning the 12 matters herein; 13 That the foregoing deposition transcript 14 was reported stenographically by me, was thereafter 15 reduced to typewriting under my personal direction 16 and constitutes a true record of the testimony 17 given and the proceedings had; 18 That the said deposition was taken 19 before me at the time and place specified; 20 That I am not a relative or employee or 21 attorney or counsel, nor a relative or employee of 22 such attorney or counsel for any of the parties 23 hereto, nor interested directly or indirectly in 24 the outcome of this action.</p>	<p>108</p> <p>1 EXAMINATION 2 Page Line 3 WITNESS NAME 4 DAVID A. CIARRACHI 5 Direct Examination By Mr. 3 6 6 Rice: 7 Cross Examination By Mr. 93 8 Scolaro: 9 Cross Examination By Mr. 98 10 Richards: 11 Redirect Examination by Mr. 104 12 Rice: 13 14 EXHIBITS 15 Deposition Exhibit Page Line 16 No. 1..... 43 22 17 No. 2..... 56 4 18 No. 3..... 71 15 19 No. 4..... 86 19 20 21 22 23 24</p>



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